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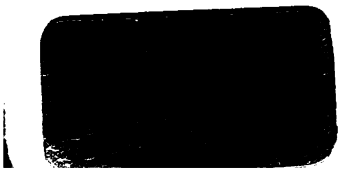

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By Authority.

£.10,000 DAMAGES.

SUMMER ASSIZES.

TRIAL AT ENNIS, COUNTY OF CLARE,

ON 27TH JULY, 1804,

Before the Hon. Baron Smith, and a Special Jury.

A

REPORT of the TRIAL

ON AN ACTION FOR DAMAGES,

BROUGHT BY

THE REVEREND CHARLES MASSY

AGAINST THE MOST NOBLE

THE MARQUIS OF HEADFORT,

FOR

CRIMINAL CONVERSATION

WITH

PLANTIFF'S WIFE.

DAMAGES LAID AT £.40,000.

Taken in Short-Hand by an eminent Barrister.

"Thoughts that breathe, and words
"That burn."—— GRAY.

DUBLIN:

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1804.

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PURSUANT TO ACT OF PARLIAMENT.

PREFACE.

THIS Trial, the report of which is now offered to the public, has excited very general expectation, and its publication has been deferred to the preſent period, in order to preſent it to the world, with an accuracy, and authenticity, ſeldom to be found in performances of this nature.

In reports of actions of this kind, on which general curioſity is ſtrongly alive, little is attended to, beyond the detail of the evidence, and the rough outline of the ſpeeches of Counſel; as the object of the reporter too frequently is, by the ſpeedieſt gratification of the public expectation, to ſecure to himſelf the advantages reſulting from his haſty and imperfect ſketch. Trials of the utmoſt importance to the community, as the preſent one will be found to be, iſſue thus imperfectly from the preſs, and being conſidered as productions, merely ephemeral, are thrown aſide after the firſt peruſal, never to be reſumed, and in truth, from the mode and nature of their compoſition, it is matter of little ſurprize,

ſurprize, that they ſhould be thus conſigned to an early oblivion. This report however, it is preſumed, will be found to have very different claims on the public attention, an aſſertion which the reporter would not venture to make, if his exertions on the ſubject of it could aſpire beyond the humble merit, that accuracy, induſtry, and fidelity may lay claim to. The aſſiſtance he has received from thoſe gentlemen, who, on this trial have exerted and diſtinguiſhed themſelves, beyond even their former efforts, united with his own labours, has enabled him to preſent a moſt authenticated report to the public, and his merit is, to reſcue, by the accuracy of this production, from the oblivion attendant on a huddled and confuſed ſketch, that ſplendid exhibition of eloquence and talent, which the ſubject of this trial gave birth to, in all their varieties. Where all were diſtinguiſhed, it would be invidious to ſtate who excelled the moſt.—In truth without entering on a diſcuſſion, where reflexion would rather augment than diminiſh the difficulty of deciſion, it may be fairly aſſerted, that the merit of each advocate in this cauſe is to be collected from the relative ſituation to it, in which he found himſelf placed,

and

and from the liberty or reſtraint, which the caſe of his client might permit or impoſe. Let their reſpective exertions therefore be appreciated by this rule, and it will be found, that, each in his place was as diſtinguiſhed, as his ſtation in the cauſe, and the effect he ſought to produce, or prevent, would allow. And that, if to each had been aſſigned different places and duties, the ſame excellence would have attended them in their change of poſition, and have crowned their exertions with the ſame unbounded applauſe.—— The vehement indignation of Mr. Hoare, the poliſhed and artful ſtatement of Mr. Quin, the luminous perſpicuity and arrangement of Mr. Ponſonby, and that unbounded range of an excurſive fancy, in Mr. Curran, which ſeizes in its progreſs, on whatever offers itſelf in literature or eloquence, to adorn and illuminate his ſubject, were to be found each in its place and order, and no doubt can exiſt that ſo long as the exertions of judgment, ſcience, and eloquence are dear to the minds of men of taſte and learning, this production, in its claſs, will be peruſed by them, with entertainment and delight.—But it may be allowed an higher aim.—The lawyer will not only derive information from its peruſal, but it will excite, on ſimilar occaſions an emulative

emulative exertion on his part, and above all, he will diſcover, in the charge of the truly learned Judge, what the law of the land is, in actions of this nature, clearly, compendiouſly, and accurately detailed, and in that language of elegant and unaffected ſimplicity, which, in the page of Blackſtone, at once conveys inſtruction and delight to the mind of the ſtudent.

ENNIS

ENNIS ASSIZES,

FRIDAY, JULY 27, 1804.

COUNSEL FOR PLAINTIFF.

John Philpot Curran,
Bartholomew Hoare,
Henry Deane Grady,
Thomas Caſey,
John White,
Amory Hawkſworth,
Wm O'Regan,
Thomas Lloyd,
Wm. M'Mahon, And
George Bennett, Eſqrs.

Agent *Anthony Hogan,* Eſq.

COUNSEL FOR DEFENDANT.

George Ponſonby,
Thomas Quin,
Thomas Goold,
John Franks,
Charles Burton,
Richard Pennefather, Eſqrs.

Agent *James Sims,* Eſq.

The Court ſat at 10 o'clock, when the following Gentlemen of the county of Clare, were ſworn as Special Jurors.

Sir Edward O'Brien, Bart. Foreman,
Sir Joſeph Peacocke, Bart.
Boyle Vandeleur,
Thomas Browne,
Henry Butler,
Thomas Studdert,
Thady Macnamara,
Edward O'Brien,
William Butler,
Eindon Scott,
Anthony Colpoys, And
William Arthur, Eſqrs.

MR. BENNETT, as Junior Counſel, opened the Declaration, and ſtated, that it had been laid for the ſum of 40,000*l.* being the compenſation ſought for the damage alledged to have been ſuſtained by the Plaintiff, in conſequence of the Defendant *ſeducing and taking away the Plaintiff's wife.*

BARTHOLOMEW HOARE, Esq. *stated the Case for the Plaintiff.*

This case is novel in this county—it is the first action of the kind a Jury of this county has ever been impannelled to try—and as it is the first, so I hope in Heaven, it may be the last. Many idle reports have been circulated, and the subject of this trial has engaged much of public attention; but it is your duty, as I am sure it is your wish, to discharge your minds from every idle rumour, to stand indifferent between the parties, and relying upon the evidence, and collecting information from the witnesses on their oaths, who will be produced to you, to found your verdict upon facts well attested, and of which you only are the constitutional Judges.

The Plaintiff, the Reverend Charles Maffy, is the second son of a gentleman of high distinction in this county, who has been more than once called to the representation of it, by a free and honourable election; and not only so descended, but is a person of liberal education, a member of one of the learned professions, in the prime of life, a man not only, of inoffensive manners, and of innocent life, but a man whose virtues correspond with his situation in society, and adorn the profession he has adopted. In the year 1796, Mr. Maffy became attached to Miss Roslewin, Mr. Maffy being a second son, and not independent of the bounty of his father, possessed then, a living but of 300*l.* a year. Sir Hugh Maffy, his father, disapproved a match, which

which had not fortune to *ſupport the claim of beauty*, and had therefore propoſed one with a young lady of a neighbouring county, which he conceived in point of fortune, and of connection, far more eligible, and on that occaſion, had offered to ſettle on his ſon, the Plaintiff, 1100*l.* a year, in landed property, together with the young lady's fortune; but, declining the hand of an amiable and accompliſhed lady, refuſing an ample and independent eſtabliſhment, with the additional enjoyment of parental bounty and approbation, and foregoing all theſe advantages, Mr. Maſſy proved the ſincerity and purity of his attachment, by a generous ſacrifice of fortune, to affection, and married Miſs Roſslewin, in March 1796, and the happineſs of the young couple during eight ſucceeding years, not only ſeemed to be, but really was unmixed, and unabating, he loving with conſtant and manly ardour, ſhe with chaſte and equal affection, and during that interval, Heaven had bleſſed their union with a boy, the bond and cement of their preſent happineſs, the pledge and promiſe of future multiplied felicities.—Then at this period, Mr. and Mrs. Maſſy exhibited ſuch an example of domeſtic contentment and ſatisfaction to their neighbours, their relatives, and their friends, as to convince them, that the ſacrifices he made, were not too great, that her grateful and affectionate returns to a conduct ſo nobly liberal, and diſintereſtedly affectionate, were not too little; guilt and treachery had not yet made their way into the abode of peace

and innocence, all was quiet, tranquil, and happy; till to the misfortune of this couple, and of this county, the Marquis of Headfort made his appearance at Limerick. Mr. Maſſy happened to have had ſome years ſince, a living in the county of Meath, where Lady Bective, the mother of the Marquis of Headfort, was a principal pariſhioner, and from whom, during his reſidence in the pariſh, Mr. Maſſy received much polite and hoſpitable attention—from this circumſtance of his acquaintance with her, Mr. Maſſy waited on her ſon, on his arrival at Limerick, invited him to his houſe, and ſtrained his narrow means, to give the ſon of Lady Beſtive, every proof of his ſenſe of her former attentions and politeneſs, but, whilſt indulging the hoſpitable ſpirit of our country, little did Mr. Maſſy think he was introducing into his houſe, the man, who could conceive the blackeſt and baſeſt deſigns againſt his peace and honour, that this *ſtranger* ſo hoſpitably received, and affectionately cheriſhed, was to pour poiſon into his peace, and make him a wretch; for no reaſonable man could ſuppoſe that Lord Headfort, at his time, ever could diſturb the peace of any family;—his age, (for he is above fifty) his figure, his face, made ſuch a ſuppoſition not only improbable, but almoſt ridiculous; yet ſo it happened, that *this hoary veteran*, in whom, like Ætna, the ſnow above, did not quench the flames below, looked at Mrs. Maſſy, and marked her for ruin. And nothing more beautiful could he behold, and

nothing

nothing upon whom it was more unlikely, that ſuch a venerable perſonage as his Lordſhip, could have made an improper impreſſion. Lord Headfort ſpent four days at Summer-hill, on his firſt viſit, and was introduced by Mr. Maſſy to the gentlemen of the firſt rank and conſideration in the county, the Biſhop of Limerick, brother-in-law of Mr. Maſſy, and every other gentleman and nobleman in the neighbourhood. I need not, in this moſt hoſpitable part of Ireland, mention to you the conſequence. Lord Headfort was received, entertained, and cheriſhed, by the friends and relatives of Mr. Maſſy. Whilſt Mr. Maſſy was endeavouring by every polite and hoſpitable attention in his power, to render his temporary ſtay in this country not unpleaſant to him, ſome anonymous letters firſt created in the breaſt of Plaintiff, *not ſuſpicion, but conveyed* an intimation, that the Marquis of Headfort was too attentive to Mrs. Maſſy. Too confident in the virtue of his wife, too generous to credit information ſo conveyed, and yet too prudent wholly to overlook or diſregard it; Mr. Maſſy prohibited his wife's viſits to Limerick, and this was followed up, by intimating to Lord Headfort, that his Lordſhip's viſits would be diſpenſed with at Summer-hill, his (Mr. Maſſy's) place of reſidence. Lord Headfort's viſits were diſcontinued. His Lordſhip promiſed not to repeat them.

And yet, though Mr. Maſſy took theſe precautions, he ſtill had the utmoſt confidence in the virtue of his wife, and not without apparent reaſon,

reaſon, for ſhe ſtill preſerved the appearance of the moſt affectionate attachment to him, and acquieſced without a murmur, in what his prudence preſcribed. Her correct manners, her ſtrict attention to her religious duties, might have impoſed upon a keener penetration than her huſband's; ſhe regularly attended divine ſervice, regularly took the ſacrament, and has been heard to reprove her brother, and brother-in-law, for want of attention to theſe duties, and in *converſation, turning on the indiſcretions of other women, was often heard to declare, that if affection for her huſband, ſo well merited, or for her child, were not* ſufficient checks to keep *her ſteady to her virtue, her ſenſe of religious obligations would alone have that effect.* The unaffected livelineſs and ſimplicity of her manners, the decency of her deportment, her endearing attentions to him and her child, left not the ſhadow of ſuſpicion on the mind of Mr. Maſſy, that ſhe could in any wiſe forget her ſex, her ſituation, or her duty, much leſs that ſhe could run into the coarſe toils ſpread for her by Lord Headfort. It will ſhock and appal you, Gentlemen, to hear the time and occaſion which Lord Headfort ſelected, for the final accompliſhment of his deſigns upon the honour of this unfortunate woman, and the happineſs of his hoſt and his friend. The day was Sunday, the hour the time of Divine Service; yes, Gentlemen, on that day, and on that hour, ſet apart for the Service of our Creator, whilſt the Reverend Rector, was *bending before the altar*

of

of his God, invoking bleſſings not only on his flock there aſſembled, but on the heads of the unfeeling and profligate deſtroyers of his comfort and honour, on ſuch a day, at ſuch an hour, upon ſuch an occaſion, did the Noble Lord think proper to commit this honourable breach of hoſpitable faith, this high-minded violation of the little laws of your diminutive country, this contempt, I would almoſt call it, this defiance of the Almighty himſelf, and will not you, Gentlemen, the ſworn arbitrators of this profanation, the guardians of our Laws and our Religion, the conſcientious miniſters of divine and human juſtice, reward the Noble Delinquent accordingly? I know you will, and to you, and to your juſt eſtimate of ſuch an act, I commit this noble act, and its moſt noble actor.

I have to ſtate what will be proved, that on Sunday, and at this hour, Lord Headfort took off Mrs. Maſſy from her huſband's houſe at Summer-hill; they croſſed the Shannon in a boat, got into a chaiſe in waiting for them on the road, and from thence poſted to Pallas, 18 or 19 miles only from Summer-hill; there he and Mrs. Maſſy, heedleſs of the miſery and diſtraction of her unhappy huſband, remained in the ſame room the whole of Sunday night—the noble Peer did not fly—no—he made ſhort and eaſy ſtages—not fearful of purſuit, not as a criminal endeavouring to effect his eſcape, but as a conqueror parading ſlowly through the country, and quietly enjoying the glory and

honour

honours of his triumph. What was his triumph? The diſtraction of the friend he maddened with agony, the pollution of a till then ſpotleſs and innocent woman. From Pallas his Lordſhip purſued his route to Clonmell and there reſted a night, from thence to Waterford, then to England, where I truſt he will ever remain, becauſe I am ſatisfied, that no advantage to be derived to the Country from the moſt ample fortune expended here, could countervail the miſchiefs that muſt flow from the application of enormous wealth to extravagant vices, and the example of ſuch prodigal profligacy amongſt us. I fear I detain you too long, yet it is neceſſary to detail the enormity of this *foul* tranſaction in *itſelf moſt foul*, and to you then I will leave it to mark, by the verdict you will give, your approbation or diſapprobation of the conduct of this Nobleman. He was not young, if young, the ardor and inexperience of youth might have been ſome extenuation of this enormity, but many years have elapſed ſince the venerable Peer could have inſiſted upon ſuch a plea; the noble Lord is, I am inſtructed, between 50 and 60 years of age, and from the life he has led, and the purſuits he has been engaged in, we muſt conclude his conſtitution not to be that of a very green old age; at this advanced period of life the ſlighteſt check of principle muſt rein in and reſtrain the paſſions.

But

But if a ſickly appetite cannot be controuled, and muſt be fed with perpetual ſupplies of dearly purchaſed variety, let the wealth he commands and abuſes, procure it, without breaking in upon the peace and honor of reſpectable families.—The noble Lord proceeded to the completion of his diabolical project, not with the raſh precipitancy of youth, but with the moſt cool and deliberate conſideration The Corniſh plunderer intent on ſpoil, callous to every touch of humanity, ſhrouded in darkneſs, holds out falſe lights to the tempeſt-toſt veſſel, and lures her and her pilot to that ſhore upon which ſhe muſt be loſt for ever, the rock unſeen, the ruffian inviſible, and nothing apparent but the treacherous ſignal of ſecurity and repoſe; ſo this prop of the throne, this pillar of the ſtate, this ſtay of religion, the ornament of the peerage, this common protector of the people's privileges, and of the crown's prerogatives, deſcends from theſe high grounds of character, to muffle himſelf in the gloom of his own baſe and dark deſigns, to play before the eyes of the deluded wife and the deceived huſband, the falſeſt lights of love to the one, and of friendly and hoſpitable regards to the other, until ſhe is at length daſhed upon that hard boſom, where her honour and happineſs are wrecked and loſt for ever; the agonized huſband beholds the ruin with thoſe ſenſations of miſery and of horror which you can better feel than I deſcribe; her upon whom he had embarked all his hopes and all his happineſs

in this life, the treaſure of all his earthly felicities, the rich fund of all his hoarded joys, ſink before his eyes into an abyſs of infamy, or if any fragment eſcape, eſcaping to ſolace, to gratify, to enrich her vile deſtroyer. Such, Gentlemen, is the act upon which you are to paſs your judgment, ſuch is the injury upon which you are to ſet a price, and I lament that the moderation of the pleader has circumſcribed within ſuch narrow limits, the diſcretion you are to exerciſe upon the damages; you cannot exceed the damages laid in the declaration, I lament, and ſo I hope do you, that you cannot, for the damages laid do not exceed one year's income of the noble Lord's eſtates. The life of the adulterer is in ſome degree in the power of the injured huſband; if the huſband kill the adulterer caught in the fact, the killing is not murder: what, according to the noble Lord's own eſtimate, would be the value of the noble Lord's life? In mine, and perhaps in your eſtimation, the value of the noble Lord's life would not be very high, but take it according to his own, and it is invaluable; the ranſom of his life ought to be the meaſure of your damages. What can he plead? Is it that he too has a wife and children, is it that as a double adulterer he comes into a Court of Juſtice, and interpoſes the innocence of his injured family between his crime and your juſtice? Are his titles and honours as they are vulgarly called, to dazzle your eyes and blind you to the

demerits

demerits of his conduct? No, no—what are titles conferred by Kings, if the ſouls of thoſe who wear them, be not ennobled by the King of Kings, theſe badges of diſtinction, theſe ſplendid emblems of ſhining merit, theſe rewards conferred by grateful ſovereigns, on eminent attainments in ſcience, or atchievements in war, may be well allowed to adorn wiſdom and virtue, but cannot make the fool wiſe, the coward brave, or the knave honeſt.

There are two grounds of defence, upon which I hear the noble Lord means to ſubmit his caſe to the Jury. The connivance of the huſband—the notorious general miſconduct of the wife—both, if am rightly inſtructed, unfounded in fact, and not to be ſupported by any credible teſtimony. Witneſſes to theſe, or to any facts, may be procured, but the Jury is to determine on their credit. But who is the man who will have the hardihood to come forward, and tell you that Mr. Maſſy, or any gentleman of his family, rank, character, education or profeſſion, could ſtoop to a conduct ſo uniformly mean, ſo ſcandalouſly diſhonourable, and if ſuch a witneſs can be found, who is the Juror will believe him? Can any gentleman believe, that a *gentleman* could be wilfully inſtrumental to his own diſgrace, the promoter of his own diſhonour, a pander to the proſtitution of an adored wife, the ſtigmatiſer of his idolized offspring? Such a tale (let the relater be who he may) is in itſelf utterly improbable. The

proud mind of my Client cannot condescend to contradict it; but let the tenor of his whole life, his character yet unaspersed and unblemished, his generous sacrifices to this very woman, before her honour became his honour, and her character the object of his protection, his exemplary conduct as an husband, a father, a pastor of our church, a member of society, give the lie to a story which cannot be told by any man of honour, or be believed by any man of sense. It is not impossible, however, Gentlemen, that the Marquis of Headfort may attempt to cover his retreat from the pursuit of justice, by some contrivance of this kind, nor is it quite impossible, however improbable, that he may find some plausible instrument, hard of forehead, and flippant of tongue, ready from the motives which generally actuate such instruments, to devote himself to the perilous service. If such a witness should appear before you, I will give you a clue to his character, I will describe to you what he is, and I much mistake, if by those marks and tokens you can fail to know him if he shall appear. He is not like those whom I have the honour to address, a gentleman who has a character to stake upon the testimony he will give. He is not a gentleman whose intercourse with the world, has fashioned him to courtesy, without wearing out and defacing, those harsh and prominent features of old fashioned probity, undeceiving truth, and unbending pride, which characterize

the

the Irish gentleman. But I will tell you what he is. (Here I muſt drop the pen, and ſuppreſs this part of the ſtatement, leſt any of my readers might apply to any living perſon what was ſaid by the learned advocate, and the rather, as no ſuch thing as he apprehended and wiſhed to guard againſt, appeared on the trial). Let me now touch the ſecond ground, of what I underſtand is to be the noble Lord's defence; the general miſconduct of Mrs. Maſſy before her elopement with him. It well becomes the Marquis of Headfort to cover with additional diſgraces the unfortunate victim of his deluſions; is it that in the ſtruggle between his avarice and his vanity, the former has conquered, or is it ſo ordered by the wiſe and all juſt diſpenſations of Providence, that the beſt boons ſucceſsful vice beſtows upon ſubdued chaſtity, are private contempt, and public infamy? But though the noble Marquis may not heſitate to ſink ſtill lower and lower, the degraded object of his guilty paſſion, yet there are other conſiderations which might hold back from ſuch an attempt, a man not inacceſſible to the feelings of humanity: Mr. Maſſy has a ſon ſtill living, why ſhould this innocent be more involved than he already is, in his mother's diſhonour? Why ſhould this half orphaned child, robbed of one parent by the noble Marquis, become by the deliberate act of his and his family's enemy, a ſad remembrancer of the other, of a father's doubt, and a mother's diſhonour? Is this additional pang to be inflicted on the lacerated boſom, is this

this new wound to be opened in a bleeding and exhauſted heart? Why will the noble Marquis endeavour to infuſe this horrid ſuſpicion into Mr. Maſſy's mind, that the offspring of his marriage bed is ſpurious, that though the father of a living ſon, he is perhaps childleſs, his affections laviſhed upon, his name born by, his fortune deſtined for, perhaps, an impoſtor. This attempt the noble Marquis will make, I am told, to mitigate the injury, and diminiſh the damages. If ſuch an attempt be made, you, Gentlemen, will appreciate ſuch an attempt, according to its real worth, and true value. This attempt can only be ſupported by ſuch a witneſs as I have already deſcribed to you, and from whom, your honourable hearts will recoil with ſcorn and abhorrence.—We are prepared to ſhew you, by the teſtimony of moſt reſpectable perſonages, that the fame of this now unhappy woman, had never been ſullied by the ſlighteſt imputation, until her connection with the Marquis of Headfort. I feel, Gentlemen, I have been honoured with your attention too long, I ſhall detain it but a very little longer. In this action the Plaintiff is entitled, either to the largeſt or the ſmalleſt damages; if connivance be proved to your ſatisfaction, a ſingle ſhilling would be too much, if not, I know not what meaſure of damages, under all the circumſtances of the caſe would be too large.—It will be proved to you how he received the firſt news of her flight. The firſt intimation was like the ſtroke of death.

His

His portion for ſeveral weeks after, agony and diſtraction. Happy would it have been for him, if death had followed the ſhock, or madneſs relieved him from miſery. It now reſts with you, to compenſate the ſufferings of this deeply injured individual; it is with you to determine, whether the penalty you inflict on lawleſs luſt, ſhall operate as a protection to legitimate happineſs, whether your ample verdict, ſhall not, like a ſhield cover domeſtic peace, and ſocial order, from brutal inſult, and diſhoneſt violation. If "the *compunctious viſitings*" of conſcience and duty, cannot diſſuade the black adulterer from his deſigns upon the quiet of others, let the example you make, drive him from your doors, and deter him from the ſpoil of your deareſt and moſt invaluable poſſeſſions, your happineſs and your honour. And may that God, under whoſe eye, and in whoſe preſence we act, when his hand ſhall hold the balance of divine Juſtice, and when thoſe tranſgreſſions from which the errors and infirmities of our nature exempt no human creature, ſhall be put into one ſcale, may the weighty and exemplary verdict of this day accompany your merits into the other, and make it preponderate.

The

The first Witness called was for Plaintiff.

THE REV. DOCTOR PARKER.

Examined by Mr. CURRAN.

Q. Do you know the Rev. Charles Massy?

A. I do since his birth, I baptized him.

Q. Is he married or single?

A. He is married, I celebrated the marriage according to the rights of the Protestant Church between him and Mary Anne Rosslewin, on the 22d day of March in the year 1796, as appears from the Registry, a copy of the entry in which I now hold in my hand.

Cross-Examined by MR. PONSONBY.

Q. How young did the lady appear at the time of her marriage?

A. About 18 years of age.

Q. Was she not very beautiful and of a gay lively temper?

A. She was, and lived much in the country, but I never knew a happier couple, the times I saw Plaintiff and his wife together they appeared to me to be a very loving couple; I never saw Mrs. Massy till she was married, but have often seen her since.

JOHN STACKPOOLE, ESQ. *Examined by* H. D. GRADY, ESQ.

Q. Do you know the Rev. Charles Massy and Mary Anne his wife?

A. I know

A. I know them very well, I am uncle to Mr. Maſſy and alſo uncle to his wife, he is the younger ſon of Sir Hugh Dillon Maſſy of Donaſs in this county, and in holy orders.

Q. What eſtabliſhment has he in the church?

A. He has two livings, one in this county, the other in the county of Meath.

Q. Are you acquainted with the circumſtances of Mr. Maſſy's father, and of his diſpoſition to his family, and do you recollect any and what occaſion when that diſpoſition was manifeſted?

A. The father having a very conſiderable landed property in his power, was enabled to ſettle liberally on his ſon, and I recollect, that when a treaty of marriage between the Rev. Charles Maſſy and a young lady of the County of Tipperary was on foot at the wiſh of the father, he was then willing to ſettle on him £.840 a year in lands, £.2400 in money, in addition to the young lady's fortune, to purchaſe land with, and I know that a ſettlement to that amount was prepared, as I was conſulted at the time; (witneſs then referred to a paper in his poſſeſſion, ſpecifying the terms of the intended ſettlement.)

Q. Was not Mrs. Maſſy very young at the time of her marriage, of conſiderable perſonal attractions heightened by a refined education and accompliſhed manners, and were not her connections numerous and reſpectable?

A. Her education was the beſt the country could afford, her manners were amiable, I thought

ſo, and ſo did every one who knew her, ſhe was young and beautiful, her family were reſpectable, and ſhe was the youngeſt of a number of ſiſters.

Q. Was there not a good eſtate in the family, and what was the fortune of Miſs Roſslewin?

A. The family eſtate was a good one, but on account of the numerous family dependent on it, Mrs. Maſſy's fortune was very ſmall, not exceeding £.200.

Q. What were the reſpective ages of Mr. and Mrs. Maſſy at the time of the marriage, and in what ſtate of affection have you known them to have lived?

A. Mr. Maſſy's age might have been about 23 or 24 years, hers about 18, and from the conſtant opportunities I had of ſeeing them, and in witneſſing their manner towards each other, I never ſaw two people fonder of each other, not in appearance but in reality.

Q. Was there any ſettlement made by Sir Hugh Maſſy on the marriage with Miſs Roſslewin?

A. Sir Hugh made no ſettlement on the marriage, as it was not had with his knowledge or approbation, which I knew from different converſations with Sir Hugh Maſſy, and alſo with Mrs. Maſſy, who is my niece, it was a love match.

Q. Are you well acquainted with Mr. Charles Maſſy, and what has his deportment been, what are his manners and education?

A. I have been in long intimacy with Mr. Charles Maſſy, and I think no man can be more amiable

amiable in his manners; he is as well educated as poſſible both in England and Ireland, and I never knew the harmony of his family interrupted in the ſmalleſt degree, till the preſent occaſion.

Q. Do you recollect any particular impreſſion made on you of the great affection which ſubſiſted between Mr. and Mrs. Maſſy?

A. I do, I was at Mr. Maſſy's houſe on one occaſion on his return from England, and they appeared as if they had been newly married, and this appearance of attachment continued for ſome days that I was in the houſe.

Q. Have they had iſſue of the marriage?

A. Yes, one very fine boy about 6 years old, and the father has as much affection for him as any man on earth can have for a ſon, and the affections of the mother were equally the ſame.

Q. What is Mr. Maſſy's ordinary conduct?

A. His conduct is religious, correct and pious, more diſpoſed to domeſtic life than to the follies of the world.

Q. Mr. Maſſy has but one brother who is elder than him, is he married or unmarried, and has he iſſue?

A. Mr. Maſſy has but one brother, Mr. Hugh Maſſy, who is elder than him, and is married and has no male iſſue, he has but one child and that child a daughter, Mr. Charles Maſſy's ſon is the only male child in the family.

Q. What may be the amount of Sir Hugh Maſſy's eſtate?

A. About 5000*l.* a year.

Q. What may the eſtate of the Marquis of Headfort be in this county, and what's his age?

A. In this county it is ſuppoſed he has in right of his wife, ſomething about 5000*l.* a year, but he has other large eſtates, and he appears to be between fifty and ſixty years of age.

Croſs Examined by MR. QUIN.

Q. What is the amount of Plaintiff's income annually?

A. Near 1000*l.* a year.

Q. The ſettlement on the firſt treaty of marriage included part of that income?

A. Yes—one living of 200*l.* a year.

Q. How long has he had this 1000*l.* a year?

A. I believe he has the county Meath living about three or four years.

Q. This was a love match?

A. Yes.

Q. That inſtance of affection you mentioned was on Mr. Maſſy's return from England, how long was he then abſent?

A. It was on his return from England; he was abſent three or four weeks.

Q. How did Defendant get his eſtate in this county?

A. By marriage—and it was ſettled on his marriage.

Q. Plaintiff's eldeſt brother is married—does his wife live with him?

A. No

A. No—for the laſt month ſhe has been in England.

Q. Has Mrs. Hugh Maſſy been uſed to live with her huſband?

A. She was at Donaſs this time twelve months.

Q. Do they live ſeparate or not?

A. They are now ſeparate.

Q. Have you ever dined with Mr. Hugh Maſſy?

A. Yes.

Q. Was Plaintiff there?

A. Yes.

Q. Was any lady there?

A. Yes.

Q. Young and handſome?

A. Yes, very handſome—about 22 or 23 years old.

Q. Don't you believe that lady was the miſtreſs of Hugh Maſſy?

A. Yes.

Q. What is her name?

A. She is called Mrs. Harvey.

Q. Has Hugh Maſſy any children by her?

A. Yes.

Q. What country woman is ſhe?

A. She is an Engliſh woman.

Q. Who brought her to this country?

A. I believe Mr. Maſſy travelled with her. I ſhould be glad to travel with ſuch a woman.

Q. Do you believe Mr. Charles Maſſy knew at the time the ſituation of this woman?

A. Yes.

Q. Was

Q. Was any of Plaintiff's family there?

A. His little ſon went with me there.

Q. How long did this lady live with Mr. Hugh Maſſy?

A. I cannot ſay. I heard ſhe lived in Dublin with him before.

Examined again by Mr. GRADY.

Q. When you were at Donaſs, was any lawyer or agent there?

A. Yes.

Q. COURT.—Was it ſince this action was brought, you ſaw Plaintiff there?

A. Yes. Mr. Comyn was there, Mr. Charles Maſſy's agent, and we all went there to adviſe about this action.

Q. When did you go there?

A. At about 11 o'clock in the morning.

Q. Were you occupied the entire day?

A, Yes. We had not time to walk out.

Q. Did Plaintiff approve of his brother's connexion with that woman?

A. I know he did not. I know he remonſtrated violently with him at various times about it, and intreated their mutual friends to do ſo too.

Q. Do you know of any coolneſs between them, in conſequence of ſuch remonſtrance?

A. I know there was.

Q. COURT.—Why did you take the child there?

A. Becauſe he was a pleaſing affectionate child, and I did not like to leave him alone with three or four ſervants.

Rev.

Rev. Mr. HADLOCK *called, but not examined.*

PATRICK DUNN *examined by Mr.* WHITE.

Q. How old are you?

A. Seventeen years.

Q. Do you know the conſequence of taking a falſe oath?

A. Yes. No chance here or next world.

Q. Do you know Defendant?

A. Yes.

Q. Where did you ſee him laſt?

A. At Donaſs, the time he took Mrs. Maſſy away.

Q. When was it?

A. After Chriſtmas.

Q. What day?

A. A Sunday, at one o'clock.

Q. Where was your maſter?

A. At church.

Q. Where was your miſtreſs?

A. Up ſtairs at the window—I ſaw him coming up.

Q. What did your miſtreſs do?

A. She came to him to the drawing-room.

Q. What did ſhe ſay to you?

A. She deſired me to go to her room and wait there for her.

Q. Did you do ſo?

A. Yes—and ſhe came up again, and aſked me if I could take a bundle. I ſaid I could, and I got another boy about 11 years of age to go with

with me with a dreſſing-box. I ſaw Lord Headfort in the drawing-room, with the wood of a piſtol appearing in his boſom.

Q. Did he go away?

A. Yes—and Mrs. Maſſy with him—his hand under her arm.

Q. How long was he in the houſe?

A. About an hour—I ſaw him hand her into the boat.

Q. Where did ſhe go to?

A. Went over the river towards Mr. Bruce's; ſhe deſired Lord Headfort to give the boy a ſhilling, and Mrs. Maſſy deſired me to ſend the maid after her.

Q. Did you go for the maid?

A. Yes; but ſhe would not open the room door.

Q. Did you go with the maid?

A. Yes. There was a carriage at the other ſide juſt ready—a pair of hackney horſes—ſaw Lord Headfort hand in Mrs. Maſſy—he put in the maid and two bundles, and went in himſelf, and deſired the driver go off to Limerick. Heard Mrs. Maſſy deſire the maid to make haſte.

Q. Did you ſee any of them ſince?

A. No.

Croſs Examined by Mr. GOULD.

Q. How long have you lived with Plaintiff?

A. Twelve months.

Q. Did you alarm Mr. Maſſy when Mrs. Maſſy went away?

A. No.

A. No.

Q. Was Mr. Maſſy always at home before this time?

A. No. He uſed to be out ſhooting—ſometimes at Mr. Captain Maſſy's.

Q. Uſed he come home early?

A. Sometimes at three or four o'clock.

Q. Was he never later?

A. He uſed ſometimes to dine there.

Q. Do you remember the day Mrs. Maſſy came from the Biſhop's?

A. I do.

Q. In whoſe carriage?

A. In her own.

Q. Did you never hear her ſervants talk of her?

A. Never.

Q. Do you remember any particular day your maſter went to Donaſs?

A. No.

Q. Did he ever come home hearty?

A. Never.

JANE APJOHN *Examined by Mr.* CASEY.

Q. Where did you live about January laſt?

A. At Pallas.

Q. Were you a ſervant at the inn then?

A. Yes. I was houſe-maid.

Q. Were you there when Lord Headfort and Mrs. Maſſy went there?

A. Yes.

Q. Did they ſleep there?

A. Yes.

Q. In ſeparate beds?

A. No. In the ſame bed.

Q. Had it next morning the appearance as if two ſlept in it?

A. Yes.

[PLAINTIFF HERE CLOSED.]

MR. QUIN.

My Lords and Gentlemen of the Jury,

It is the particular duty of my ſituation to lay before you the circumſtances of the Defendant's caſe; ſubmitting it on his behalf to your inveſtigation and deciſion, with a perfect confidence of your diſcharging the important duty devolved upon you, with all that juſtice and fidelity which may be expected from the goodneſs of your underſtandings and the integrity of your hearts.

Caſes of this ſort impoſe painful taſks upon the counſel for the reſpective parties. They will not bear much ceremony, no polite forbearance, no punctilious reſtraint can reaſonably be expected; of this you have had tolerable evidence already. The huſband who brings his action *as ſuch*, to recover compenſation for an injury offered to the moſt ſacred relation in ſociety, does thereby put his character and conduct *as* a huſband, directly at iſſue, and if he expects to ſucceed, muſt ſhew that he fulfilled

filled and diſcharged the duties ſpringing from that relation, becauſe it is the violation of it, which conſtitutes at once the injury and the claim. We cannot differ as to the principle and foundation of this action; it ariſes out of the neceſſary, politic proviſions of ſociety. It is bottomed in the fineſt and pureſt affections of the human heart. What man is there, poſſeſſed of rationality and feeling, what huſband who deſerves the name, that can reſiſt to ſympathize with, and is not impatient to redreſs the ſufferings of a perſon, deprived without default of his, of that moſt ineſtimable of human treaſures, an amiable and virtuous wife? Here we agree—but in proportion as ſuch feelings impel us to remunerate *ſuch* an injury, and vindicate the wrongs of *ſuch* a ſufferer; ſo do we turn with diſguſt and reprobation, from an attempt to pervert the ſacred nature of this remedy from its juſt and honeſt purpoſe, from the aſſiſtance of the pure, genuine, and legitimate objects of its care, to laviſh its redreſs upon *factitious* injury, and make that Jury who ſhould be the inſtruments of its ſalutary efficacy, ſubſervient to the ſchemes of hypocriſy and impoſition. If the huſband, who by his deportment is entitled to the name, meets ſuch an injury, and ſuſtains ſuch a loſs, compenſate him (if he can be compenſated), to the utmoſt limit which the caſe may bear. You at the ſame time requite the moſt poignant abuſe which man can ſuffer, and give a wholeſome leſſon to ſociety,

but if all who call themſelves huſbands, ſhall appeal ſucceſsfully to this tribunal, and under *pretence* of injury, ſhall clamour for *money*, to aſſuage their feelings, by ſupplying their wants; you, in defiance of reaſon and of feeling, confound all claimants, you confer what ſhould remunerate the injured, on him who has received no injury, and equalize thoſe perſons, who ſhould ſtand in your eſtimation, as ſeparate as innocence and guilt. You ſanction, nay, encourage an adulterous traffic, the matrimonial bond will become aſſailed by the moſt licentious, diſſolute, and ſordid motives, luſt, avarice and indigence, will inſtitute treaties on the ſubject: huſbands will take their wives to market, and inſtead of reſtraining, you will promote the vice. The caſe of the Defendant is not, becauſe it cannot, be a caſe of juſtification. The fact ſtands admitted, and however it may be accounted for, it cannot be morally defended under any circumſtances. The advocates of the Defendant would not outrage moral decency, or affront the feelings and underſtanding of a Jury. But the *principle* of the action ſhould be exactly underſtood—the Defendant is not here upon his trial for the commiſſion of an offence againſt ſociety—you are not placed there on this occaſion, as moral cenſors of the actions of men—public duties ſhould not be confounded—the Defendant is not the ſubject of criminal proſecution—but the Plaintiff ſeeks compenſation for a ſpecific injury, and muſt ſhew he has ſuſtained it—

it—he ſays he has loſt, by means of the Defendant, the comforts and enjoyments of conjugal domeſtic life. The law upon the ſubject is ſimple and well ſettled—If the huſband in the emphatical language of the law, *connives* at his own diſhonour, (which I would not be underſtood to ſay, he has done in the preſent caſe) it goes to the foundation of the action, and he is not entitled to a verdict. That muſt of courſe be collected from the circumſtances—neglect and inattention may be ſo groſs, as to amount to ſatisfactory evidence of connivance, or may diſcloſe ſuch demerits on the Plaintiff's part, as ſhould mitigate the damages to nothing. The caſe before you is of the latter claſs, and as ſuch we put it to you. Let me advert to the circumſtances under which the Plaintiff married Miſs Roſslewin. She was extremely young—it was what is called, a match of love—that is, at their time of life, it was paſſion upon both ſides, and nothing *elſe*—their attachments, founded as they were, were fleeting, and when they fled, nothing remained to bind them—their means were ſtinted, and they poſſeſſed but ſmall reſources, to ſupport the expences of faſhionable life—the ſatiated lover, became the careleſs huſband, and engaged in his own indolent purſuits, he left his wife to chuſe her own. She was young, volatile and giddy, beautiful and vain, of an uncommon levity (the witneſs called it *gaiety*) of diſpoſition, and addicted to the love of dreſs, beyond even the ordinary paſſion of her ſex—

his

his manly advantages, and liberal education, enabled him, and the prudential duties of his ſtation enjoined him, to obſerve and guide her; leaſt uncontrolled by the preſence, and unaſſiſted by the inſtruction of a huſband, unreſtrained by a marital admonition, unattended, unadviſed, unchecked, and unreproved by him, who was the natural guardian of her morals, and his own honour, indulged in profuſion, to which his income was inadequate, ſhe engaged in a career of diſſipation, and plunged into that vicious vortex, which hurried her to the depth of her own infamy, and his diſgrace.—Her life was paſſed and occupied—the Plaintiff ſuffered it to paſs, amidſt thoſe ſcenes of faſhionable enjoyment, wherein women, unfortified by principle, and unaided by advice, become expoſed to the moſt dangerous impreſſions; her improving beauty ſolicited, and provoked the admiration of our ſex, and her ſituation encouraged their approaches—devoted to his own amuſements, her natural protector wandered from her, and left "her fair ſide all unguarded," ſhe received and permitted with undiſguiſed delight, aſſiduities too obſervable to paſs unnoticed, or eſcape the effect of public obſervation. Her dreſs became magnificent and coſtly. She paſſed months at the houſes of ſingle gentlemen, unaccompanied or unattended, ſave occaſionally by the Plaintiff; and at Galway in particular, where ſhe went on an excurſion, the attentions

of

of a military man of rank, became ſo remarkable, and her encouragement ſo glaring, that her own connections found it neceſſary to ſnatch her from the ſpot, as from impending infamy, and hurried her to Limerick.

Thus it will appear that this unfortunate young lady, who has been poetically repreſented by the Plaintiff's counſel as a paragon of domeſtic fidelity and female purity, until the ſpoiler came; and whoſe *piety* has compoſed *one* topic of the panegyric, had never beheld the Defendant or he her, until the breath of public remark had tainted, if not blaſted her reputation. Such as I have deſcribed her, ſo did the defendant find her; engaged in public faſhionable life, immerſed in pleaſures and practiſed in thoſe arts which too often render a lovely married woman more *feducer* than *feduced*. He met her firſt at the races of Limerick, then at the races of Mallow, unattended by the Plaintiff at either place; the attentions of a man of ſuch ſuperior rank were too flattering to be declined, they paſſed under public obſervation at all places of public and private faſhionable reſort, the eyes of all companies were fixed upon them, and her reception of them being too obvious to paſs unmarked, became the ſubject of general converſation—She avowed to her relations her attachment to the defendant, and her determination to go off with him. Are you to preſume that all this took place, unknown to her huſband? Was *he*, though on the ſpot, alone deceived?

deceived?—It is ſaid the Defendant's propenſity to gallantry is notorious—was *that* unknown to the Plaintiff?—It would be monſtrous under ſuch circumſtances to preſume him ignorant; but he *ſhould* have known her conduct becauſe it was his duty to obſerve and govern it. That ſuch was her demeanour will appear in proof.—We have heard and read of various huſbands—the tender, the careleſs, the myſterious, the ſuſpicious; but the Plaintiff adds a new one to the drama, and gives the *unſuſpecting* or the *ſightleſs* huſband.—Here was no breach of friendſhip—no confidence abuſed—the intercourſe went on in public, and it was not until after a familiar acquaintance with the wife, well known to the plaintiff, that he and the defendant became known to each other. While theſe proceedings were in progreſs to their conſummation, the Plaintiff, who had reſigned Mrs. Maſſy to her own good guidance, paſſed his time at the houſe of his brother, enjoying the highly moral intercourſe of him and Mrs. Harvey. What! Gentlemen of the Jury, the man who claims 40,000*l.* againſt another, for a breach of the moſt ſacred moral relations in ſociety—himſelf of a ſacred and highly moral function, aſſociates with the miſtreſs of his brother, ſanctions by his preſence, the expulſion of an amiable and deſerving woman, caſt into exile from that manſion which ſhe could adorn, and witneſſes her rights ſupplanted and her place uſurped by the dominion of a concubine; and if *theſe* be the Plaintiff's claims to your regard,

indulge

indulge him to the extent of his demand; but before you do ſo, you will expect that he ſhall ſhew himſelf entitled from his own deportment, for your verdict will be the reſult of reaſon and of juſtice, and not (as has been ſaid) of *vengeance*. What will you be diſpoſed to feel, when you ſhall hear that ſhe dined repeatedly at the houſe of the defendant, alone, unaccompanied and uncountenanced by any other female, and ſurrounded by his officers? To what can you aſcribe ſuch an unblushing breach of delicacy? What inference do you draw from that? Why, that her principles were ſapped before, and that it is as idle as unjuſt to charge the Defendant with her ruin! What will you think when I inform you, that after, in conſequence of ſuch miſconduct, her relations ſhut their doors againſt her, the huſband opened his. She returned from Limerick to Summer-hill, the Plaintiff's houſe, accompanied by the Defendant, and no other perſon, in the Defendant's carriage, and was received by her unſuſpecting huſband.—What did he do? Did he expreſs a natural indignation? Did he remonſtrate—did he reprove? No, Gentlemen of the Jury? He retired to *Dian's Temple*, at Doonaſs, and the key of the cellar being left behind, nothing remained to impede the indulgencies of *love* and *wine*—from thence till he went off, the Defendant paſſed whole days at Summer-hill uninterrupted by the Plaintiff. Allow me to aſk, where was Mr. Maſſy, and how was he occupied while his wife was ſo conducting herſelf?

ſelf? Was he engaged away in the ſervice of his king and country? Was he laudably employed in the induſtrious taſk of furniſhing the comforts and elegancies of life for the partner of his heart, and the dear pledges of their love? No—the man poſſeſſing a jewel of ineſtimable worth, who wiſhed in truth to guard its value and preſerve its luſtre, would wear it next his heart; but the Plaintiff threw this gaudy worthleſs *trinket*, here and there, to be picked up by every caſual finder, or let it hang ſo looſely from his perſon, as to invite, and ready as it were to bleſs the filly hand, which, tempted by its glitter, might feel diſpoſed to rid him of the contemptible embarraſſment, and ſnip it from his ſide.—It *has* been loſt, and you are called upon to eſtimate the injury, and to reprize the loſs.—You will reflect how far it was worth the keeping—you will conſider what pains he took to guard it—you will appreciate the value of the article, and then determine, upon what grounds, and to what extent, the Plaintiff merits the interpoſition of a jury.

COLONEL PEPPER *Examined on the part of Defendant.*

Q. Have you ever ſeen Mrs. Maſſy?
A. I have.
Q. Do you know Lord Headfort?
A. I do.
Q. When did you firſt ſee Mrs. Maſſy?
A. Sometime

A. Sometime in September or October laſt, at or before the races of Limerick.

Q. When did the acquaintance between Mr. Maſſy the Plaintiff, and the Marquis of Headfort commence?

A. I do not know.

Q. Have you often met Mrs. Maſſy in company, and where?

A. I have often met her in different companies on different days in October, November, and December, often at the Marquis's, and elſewhere.

Q. When ſhe dined at the Marquis's, were ladies always there?

A. I do not recollect poſitively whether ladies were always there, but to the beſt of my recollection ſhe has dined there without other ladies.

Q. Did Mr. Charles Maſſy always dine in the company of his wife on theſe occaſions?

A. Not always.

Q. Where were theſe dinners given that you ſpeak of?

A. Theſe dinners were at Lord Limerick's houſe, in which Lord Headfort reſided.

Q. Have you known that Mrs. Maſſy remained there after dinner?

A. I have.

Q. Was Mrs. Maſſy very expenſively dreſſed and in preſence of her huſband?

A. I have ſeen her exceedingly well dreſſed, ſhe appeared very fond of dreſs, exceedingly ſo.

Q. Do you know that theſe circumſtances became the object of public converſation?

A. I do.

Q. Do you recollect meeting the Plaintiff in company with his wife at Lord Headfort's table?

A. Yes.

Q. Did the Marquis pay any particular attention to Mrs. Maſſy, and in the preſence of the Plaintiff?

A. He did, and ſhe ſeemed highly flattered by them, his attentions were ſo marked that they drew the obſervation of the gentlemen at the table.

Q. Who chiefly compoſed the company?

A. It was generally compoſed of the officers of Lord Headfort's regiment.

Croſs-Examined by MR. CURRAN.

Q. You are a young man, Colonel?

A. Yes, I am young.

Q. Pray Colonel how long ſince the Marquis left College?

A. I can't tell.

Q. You and the Marquis were in College together, were you not?

A. No.

Q. Pray how ſtands his account with the calendar?

A. I have taken no calendar of his age, but he is pretty far advanced.

Q. Are

Q. Are not there now a few white memorandums on his forehead, a few grey hairs, Colonel, was he not grey before he was good?

A. He is grey.

Q. You have heard him talk of action, paſſions and ſo-forth, on the general topic of gallantry?

A. Sometimes.

Q. Could you give a rough gueſs at the number of Saints on his calendar, or how many Beſſys or Pollys he may have drank bumpers to? (on witneſs heſitating,) I ſee Colonel, it is very well, I reſpect a ſoldier's taciturnity on ſubjects of this ſort.—(no anſwer.)

Q. Some of thoſe ladies were married, ſome unmarried, Colonel?

A. Yes, ſome were and ſome were not.

Q. Was it not mortifying to his vanity to talk of his being ſo unfortunately ſeduced? (no anſwer,) Is he not vain of theſe gallantries of his?

A. I cannot ſay I perceived it.

Q. Has he not boaſted of them?

A. I never heard him that I recollect.

Q. The Marquis is very rich, has a very large fortune?

A. He has, Sir.

Q. The Marquis is married, and has a wife, a very amiable woman?

A. He has.

Q. How many children has he?

A. He has two grown up, and two young ones, he has a ſon not yet gone to College.

Q. Did

Q. Did not other ladies dine at Lord Headfort's when Mrs. Maſſy dined there?

A. I have ſeen other ladies alſo dine there on theſe occaſions, and alſo at the Biſhop's houſe.

Q. How nearly connected is the Biſhop's wife to Mrs. Maſſy?

A. She is her ſiſter.

Q. The Biſhop's is next door to Lord Limerick's in which Lord Headfort reſided?

A. It is.

Q. Is it not natural from the ill ſtate of the Biſhop's health that her ſiſter ſhould have attended her?

A. It was in my opinion perfectly natural.

Q. Do you conceive that a woman living next door to a man of 50 would be equally criminal in viſiting him, as ſhe would a man of 25?

A. I do not think there is much difference.

Q. Were there not many ladies of diſtinction preſent at theſe dinners?

A. There were.

Q. Give me leave, Colonel, to aſk what do you call marked attentions, for inſtance, if a gentleman ſhould aſk a lady, "madam, permit me to pour a little melted butter on your greens," if he ſhould aſk her to take a glaſs of wine with him, would you call thoſe marked attentions?

A. No.

Q. Pray Colonel, be ſo good to ſhew the manner in which it ſhould be done?

A. The

A. The attentions were ſuch as to make her ſmile.

Q. Do you not believe that Mrs. Maſſy is now living with the Marquis in England, publicly?

A. I believe ſhe is.

Q. Do you not believe that he bore her off in his own carriage publicly, without diſguiſe?

A. Yes, I have heard it, and I believe it.

By the COURT.—You ſay Lord Headfort payed Mrs. Maſſy marked attentions; were they ſuch as a huſband ſhould have diſapproved?

A. They were.

Mr. CURRAN.—There was no touch of the perſon?

A. None I ſaw.

By a JUROR.—Was the Plaintiff ever preſent when thoſe marked attentions were paid by the Defendant, to Mrs. Maſſy?

A. He was.

JAMES CHARLTON, *Examined by Mr.* BURTON.

Q. You are a captain in the Meath regiment, and Lord Headfort is colonel of it, are you acquainted with the Defendant, and where did he live in Limerick?

A. I am acquainted with the Marquis, who had lived at Lord Limerick's houſe, while in Limerick.

Q. Do you know Mrs. Maſſy?

A. I do.

Q. Have

Q. Have you ever dined in her company?

A. I did, in December laſt meet her at Lord Headfort's, when there was no other lady there.

Croſs Examined by Mr. HAWKESWORTH.

Q. Did you not alſo meet theſe other ladies of the firſt rank and character in Limerick?

A. I did.

Q. Did not the Marquis give balls, both public and private?

A. He gave ſeveral private parties, and one public ball.

Q. Was not the Biſhop of Limerick in a dangerous ſtate of health at that time?

A. He was, and I have no doubt but that Mrs. Maſſy's reaſon for going to Limerick at that time, was in conſequence of the Biſhop's illneſs.

Q. Have you met the Biſhop's lady at Defendant's houſe?

A. I have.

Q. Was not there an intimacy between the Biſhop's family and the Marquis?

A. I do not know if there was any great intimacy between them.

Q. Was Plaintiff at Lord Headfort's the day Mrs. Maſſy dined there, unaccompanied by any other lady?

A. He was not.

Mr.

Mr. BURTON *again.*

Q. Did you ever dine there in company with one lady only, at any other time?

A. No.

By a JUROR.—Did Mr. Maſſy dine there, the day ſhe dined there, without any female being there but herſelf?

A. No, he did not.

GEORGE EVANS BRUCE, *Eſq. Examined by Mr.* GOOLD.

Q. Are you acquainted with Mr. and Mrs. Maſſy?

A. I am.

Q. How long?

A. Very long with Mr. Maſſy—ſince marriage only, with Mrs. Maſſy.

Q. How long have you known Lord Headfort?

A. Six or ſeven years.

Q. Did Lord Headfort know Plaintiff before he came to Limerick?

A. No.

Q. Had you any opportunities of knowing Mrs Maſſy and Lord Headfort?

A. Many.

Q. Did Lord Headfort pay attentions to Mrs. Maſſy in preſence of Mr. Maſſy?

A. He did.

Q. Were they the ſame as he paid other ladies?

A. No. They were marked attentions.

Q. When did Lord Headfort ſee Mrs. Maſſy?

A. Firſt time I ever ſaw them together was before the races of Limerick, at dinner at the Biſhop's.

Q. Were you laſt ſummer at the races of Mallow?

A. I was.

Q. Was Lord Headfort there?

A. He was. I ſaw him with Mrs. Maſſy at the Aſſembly.

Q. Did Mr. Maſſy go with her?

A. He did. He left her there the firſt period, and went away.

Q. Did Mrs. Maſſy go to the public rooms while at Mallow?

A. I met her there.

Q. Did you obſerve Mrs. Maſſy expenſively dreſſed?

A. About ſix weeks before her elopement, ſhe wore very expenſive trinkets, particularly a large necklace and ear-rings—I think a topaz.

Q. Did her huſband obſerve them?

A. He muſt.

Q. Did Mr. Maſſy obſerve thoſe attentions?

A. He was preſent when I ſaw what I conſidered attention.

Q. Did you take any ſtep to inform Mr. Maſſy of thoſe attentions?

A. In conſequence of what Mrs. Maſſy told me, I informed her ſiſter, and the Biſhop and his brother, of her intention to elope.

Q. After this information, was Lord Headfort allowed to viſit Mrs. Maſſy?

A. He

A. He was.

Q. Did the Biſhop do any thing in conſequence of your information?

A. He wrote a letter, addreſſed to Mr. Maſſy, which I delivered to him.

Q. Did Lord Headfort ſee her after that, and where?

A. Yes. He did at Summer Hill, at her huſband's houſe.

Q. Do you remember her returning from Limerick with him in his carriage to Summer Hill *tête-a-tête*?

A. I do. When I ſaw them, they were *tête-a-tête.*

Q. Was this before or after delivery of the letter?

A. Before.

Q. Did Mr. Maſſy ſee Lord Headfort after being in the carriage?

A. Often ſaw him—after, at Summer Hill.

Q. Did you ſee Lord Headfort at Donaſs?

A. Often.

Q. How long before elopement was it, that you ſaw them in the carriage?

A. About three weeks.

Q. How long did Lord Headfort after the carriage ſcene, dine at Donaſs?

A. I dined with him there two days after.

Q. Who were of the party?

A. Lord Headfort, Mr. Hugh Maſſy, Mrs. Harvey, and myſelf—and Mr. Charles Maſſy at one time.

Q. How long ago ſince you firſt dined in company with Mrs. Harvey, and Mr. Charles Maſſy.

A. Some months ago—before the elopement.

Q. Do you remember any day Mrs. Maſſy was left alone at Summer Hill?

A. Yes. The day previous to the elopement I dined at Donaſs, I walked with Mr. Charles Maſſy from his own houſe to Donaſs—Lord Headfort was not there.

Q. Have you ever ſeen Plaintiff's child in company with Mrs. Harvey?

A. I have.

Q. Did Mr. Charles Maſſy know it?

A. I don't know.

Q. Are you related to Mrs. Maſſy?

A. I am.

Q. Did ſhe ſeem to you a woman of levity?

A. Always gay in her manner, and dreſſed remarkably well.

Q. Did you ever ſee any body elſe ſhew Mrs. Maſſy any marked attention?

A. I have by more than one, beſides Lord Headfort.

Q. Were thoſe attentions a topic of public converſation?

A. In one inſtance I know they were.

Q. Was this before ſhe knew Lord Headfort?

A. It was before.

Q. Do you know of any letter from Sir H. Maſſy to Mr. Charles Maſſy, previous to Lord Headfort's acquaintance with him?

A. I do.

A. I do. From converſations I had with Mr. Charles Maſſy.

Croſs Examined by Mr. CURRAN.

Q. You are an intimate friend of Lord Headfort's?

A. Of late very intimate, ſince he came to Limerick; but before that, I knew him during the rebellion at Waterford.

Q. How long before the elopement did you know of its likelihood to take place?

A. About two months.

Q. How long before, in conſequence of what Lord Headfort told you?

A. He never ſpoke to me on the ſubject.

Q. Did you know it would take place the day it did?

A. I did not.

Q. Did you know of any preparation for it—carriages, horſes, &c.?

A. I did not—but Lord Headfort did call on me that Sunday as he uſed to do, with a carriage.

Q. Were any horſes put up in your ſtable that day?

A. There were two.

Q. Was not Mrs. Maſſy always neat in her dreſs?

A. Always remarkably ſo.

Q. What time of day was it you ſaw her in the carriage alone with Lord Headfort?

A. In

A. In the middle of the day, near Dean Croſbie's.

Q. Was it extraordinary to ſee a lady with a man of 50?

A. No.

Q. Was not Mr. Maſſy highly inflamed when he heard of it?

A. I am ſure he was.

Q. Don't you believe he prevented her from going to Limerick after that?

A. I do not. She was in Limerick after that, how often, I do not recollect.

Q. Don't you believe Mr. Maſſy was exceſſively attached to this unhappy woman?

A. I always thought ſo?

Q. Don't you believe his harſh reprimand of her proceeded from extreme fondneſs for her?

A. I always thought he loved her very much.

Q. Was it not his fondneſs for her, made him oppoſe his father, and ſacrifice his proſpects from him.

A. I believe it was.

Q. Did Sir Hugh Dillon Maſſy offer to ſettle 1100l. a year on him, if he married a lady of his chuſing?

A. Sir Hugh could do ſo, and was diſpoſed to do every thing for his children.

Q. Did Plaintiff forbid Lord Headfort his houſe?

A. I heard he did from one gentleman, who ſaid he only heard it, and I believe he did.

Q. You

Q. You doubt the truth of it, becauſe you ſaw Lord Headfort at the houſe?

A. Yes.

Q. Did you know the contents of the biſhop's letter?

A. No—I did not.

Q. Is not Limerick a calumniating place, and deals more in poetry than hiſtory?

A. Never knew a ſmall town that was not, and Limerick is as much ſo in proportion as any other.

Q. Would not a reflecting man diſbelieve reports of calumny?

A. I think he would, if no reaſon to the contrary.

Q. Do you believe on your oath as a man of honour, and in the preſence of your country and your God, that Plaintiff connived at the conduct of his wife?

A. I believe not—I am ſure he was incapable of it—his fault was more of the head than the heart.

Q. Do you believe a letter from Mrs. Maſſy to Mr. Maſſy was ſent with privity of Lord Headfort?

A. It was encloſed under cover to me by Lord Headfort, and I ſent it to Plaintiff's brother to give Plaintiff.

Q. Was not Plaintiff fond of his child?

A. Extraordinary fond of it.

Q. Don't you believe he carried his child through

through fondneſs to his brother's, to prevent his remaining with ſervants?

A. Yes.

Q. Are not the manners of Mrs. Harvey thoſe of a gentlewoman, and could ſhe corrupt a child of that age?

A. They certainly are the manners of a gentlewoman.

[DEFENCE CLOSED HERE.]

Mr. G. PONSONBY.—It is my duty, Gentlemen of the Jury, as Counſel for the Defendant, to trouble you with a few obſervations on the whole of the evidence that has been laid before you.—You will pleaſe to obſerve, that this action is brought to recover compenſation, in money, for the injury ſuſtained by the Plaintiff—that injury only, is the foundation of this action, and therefore, what you have heard of Juries giving damages by way of *example*, in order to deter others from the commiſſion of a like offence—of ſetting themſelves up as cenſors, is

* The letter alluded to in the evidence of Mr. Bruce from the Biſhop of Limerick to the Plaintiff, and delivered by Mr. Bruce, was only delivered on the Friday before the elopement, which took place on the Sunday following.—It was couched in general terms, and merely requeſted that the Plaintiff Mr. Maſſy would call on him (the Biſhop) as ſoon as poſſible on particular buſineſs.—This he could not comply with, until the Sunday on which, during his abſence, the elopement took place.—It is to be obſerved alſo, that many circumſtances ſtated by Defendant's Counſel were not even attempted to be proved.

perfectly

perfectly irrelevant to the caſe before you.—It is the uſual practice of counſel to have recourſe to this artifice, becauſe they know well, ſhould they ſucceed in impoſing ſuch a principle on a Jury, there is no redreſs for the Defendant if the damages ſhould be *exceſſive*. In other caſes, ſuch exceſs may be rectified, but in this, never can; and, therefore, from the conſequence of inflamed paſſions, there is no relief to be had, and this ſhould be a peculiar reaſon with a Jury to reflect moſt maturely in apportioning damages, becauſe, ſhould they happen to be miſtaken, their miſtakes can never be rectified.—In this action the law is plain and ſimple. The Plaintiff in it complains that the Defendant deprived him of the comfort and ſociety of his wife, and the buſineſs for a Jury is on their oaths to enquire, what comfort has been loſt, or injuries ſuſtained by the Plaintiff, and whether ſuch have been brought on by his own miſconduct. This muſt be the rule to regulate the Jury.—The degrees of defence to the action are various. A Defendant may ſhew, the Plaintiff is not entitled to any damages, becauſe if any injury has been ſuſtained, it was occaſioned by his default, in conniving at his own diſgrace. If ſuch a defence ſhould be proved, the Plaintiff muſt fail altogether; but that is not the defence meant to be ſet up here. There are other degrees of defence: the huſband is not only in fact, but is conſidered by the law, the guardian and protector of his wife; but if, inſtead of ſo protecting her, he puts her in a

ſituation to provoke temptation, he is not entitled to ſuch damages as he might otherwiſe have been. The defence I am inſtructed to inſiſt upon, goes not to the right of the action, but is irreſiſtible in mitigation of the damages.—I do not accuſe Plaintiff of connivance at the miſconduct of his wife, but I do inſiſt, it muſt be inferred from the evidence, that he is not entitled to damages ſo great as his Counſel would ſeem to require.

If a woman has long lived with her huſband in affection, and diſcharging, as became her, the duties of her ſituation, and is ſeduced, the Jury ought to compenſate him moſt apply.—If a long ſuppoſed friendſhip is perverted to the feduction of ſuch a wife, the ſeducer ought to be puniſhed —the Jury ought to be liberal in compenſation. It would be well if ſociety were ſo perfect, that there could be no danger of ſuch an offence. The truth is—men are more in fault than women.—Women are in all countries regulated by the conduct of men, and if men will talk with levity—if they will talk lightly of women who have been guilty—if thoſe who are guilty are received into ſociety, it is but natural their own wives ſhould be induced to act the ſame part thoſe guilty women have acted. It is the husband's own conduct with regard to other women—his conduct in ſociety in general—in deportment, in converſation, that can entitle him to damages in an action of this ſort.—It is painful to an advocate to ſpeak of a man in the ſame ſociety with

with himſelf with ſeverity; but it is often his duty to do ſo. What has been the conduct of this Plaintiff's family?—To be ſure it has been endeavoured to be proved, that the lady was very religious—that ſhe remonſtrated at the conduct of her brother-in-law—that ſhe was fond of Sunday devotion; but was there not in ſuch devotion as much affectation as there was religion? There was in the Plaintiff's brother ſo much of immorality, that even the Plaintiff was prevailed upon to remonſtrate with him. What time more fit for ſuch remonſtrance than his dinner viſits! No doubt the way of life of his brother was extremely diſagreeable to the Plaintiff, and, therefore, he frequently viſited him, for the purpoſe of effecting a reform in his religious principles and habits. But, admitting the fact to be ſo, if the Plaintiff's wife ſaw the frequency of thoſe viſits, ſhe might reaſonably enough conſider it ſtrange in him to viſit a houſe whoſe legitimate owner was expelled, in order to make way for a woman—a kept miſtreſs of her huſband, and, therefore, the Plaintiff's wife might conſider it venial in herſelf to indulge a little in the ſame guilt. Will you then ſay, Gentlemen of the Jury, that the Plaintiff has not been at leaſt indiſcreet to a very great degree; and that connubial honour and domeſtic peace, were not ſo highly valued by him, as his counſel would fain perſuade you they were.

You will conſider, Gentlemen, whether, as a miniſter of religion, he ſhould not have forborne

to aſſociate with a relative who had thus ſet at defiance every moral and ſocial duty, and by the ſeverity of his cenſure, prove he could not pardon ſuch an offence. But, inſtead of that, has he not ſanctioned, by his conduct, the acts of another man, and now complains of the very ſame when done by the Marquis of Headfort.

It has been ſaid, that the Defendant was a man of very notorious gallantry, regardleſs of the ties which bind ſociety, and trampling under foot thoſe bonds that ſecure the happineſs and comfort of families. How often he has ſinned in this reſpect I know not; but I will venture to ſay, this is the *firſt* action of this ſort that ever was brought againſt him. But even admitting the fact to be as charged againſt the Defendant, was it not notice to the huſband to regard, with a more watchful eye, the connection he ſaw increaſing between his wife and Lord Headfort?—Why did he allow any intimacy at all to ſubſiſt under ſuch circumſtances? Why allow his wife to dine with him? Why allow her to viſit him, when his actions were ſo pointed? Was it not the height of indiſcretion in Plaintiff to allow his wife to continue this intimacy—an intimacy that could not proceed from any friendſhip between the Plaintiff and Defendant; for none ſuch ſubſiſted. To what account, then, was he to place thoſe attentions to his wife? Was it not to Defendant's regards for *her*, and not for Plaintiff? The hiſtory of the world unfortunately affords many inſtances of the violation of friendſhips the

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moſt ſacred, and of their perverſion to purpoſes the moſt abominable.—But here no previous friendſhip exiſted. Sufficient occurred to awaken the attention of Plaintiff, when thoſe unuſual tenderneſſes were ſhewn by the Defendant to his wife.

It has been ſaid, to be ſure, that his confidence in her honour and principles were even ſo great as not to allow him to ſuſpect her—Why—It reminds me of one of the plays of Congreve, where a lady laments the violence of her paſſion to her confidante. The confidante ſays—" ah, you will never yield—your honour—your integrity will ſupport you." The lady replies—" ah, me, what is *integrity* to *opportunity*;" and therefore, if the huſband allows a partiality for his wife to continue without interruption, he contributes to his own misfortune—moſt particularly, if the ſuitor be a man of the character and conduct this Defendant has been ſaid to be, what can it be but the groſſeſt folly in the huſband not to diſcountenance his advances altogether. If any thing detrimental to him follows from ſuch neglect, who has he to blame but himſelf? Is he equally entitled to damages with the huſband, who would, inſtead of winking at the imprudencies of his wife, have removed her altogether from the neighbourhood of her gallant, or at leaſt have forbidden her a longer continuance of his acquaintance? To talk, therefore, of the kindneſs of this huſband, of his unwillingneſs to open his eyes to the conduct of his wife, is but

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idle declamation—he has no body to blame but himſelf.

There are other conſiderations, Gentlemen of the Jury, of great moment, neceſſary for your deliberation—I mean the actual loſs the huſband has ſuſtained, independent of what is called the loſs of honour. Was not her conduct ſuch as ought to make every prudent huſband watchful? Was ſhe not the ſubject of public animadverſion; and if he has not diſcharged his duty, ought he to get the compenſation of a huſband the moſt virtuous?

He comes for compenſation for the loſs he has ſuſtained in the ſociety of his wife; but if ſhe would make the ſame miſtake with any other perſon, this Defendant ought not to be puniſhed beyond the proportion of his offence? There is no man ſo rude or dull, as not to underſtand, that if the approaches of a ſtranger be well received by a married woman, the huſband cannot loſe much by the loſs of her ſociety. The Plaintiff here lays his damages at 40,000*l.*—a ſum never heard of, even in the days of Ld. Kenyon—a judge remarkable for the ſeverity of his principles. The truth is, Gentlemen of the Jury, no woman capable of conduct ſuch as Plaintiff's wife has been guilty of, could be worth 40,000*l.* So ſtrange was her conduct, and ſo negligent was her huſband, that one would think it would be almoſt unreaſonable to expect he ſhould have told the Defendant that he valued his wife at 40,000*l.* One begins to think

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it was not fair in the Plaintiff to allow the addreſs of my Lord Headfort to his wife, without giving him ſome notice that he valued her ſo high. Had he done ſo, are you ſure, Gentlemen, that the Defendant would not have withdrawn his aſſiduities? And this is the only want of candour I impute to the Plaintiff. Admitting that Defendant's object, was the reputation of gallantry, and that Plaintiff knew that was the fact, and encouraged it, and wiſhed to make the Defendant pay for it, he ought at leaſt to have told the Defendant he expected 40,000*l.* for his indulgence of him. What! Gentlemen of the Jury, 40,000*l.*! for the ſeduction of a woman only four months known to the Defendant, previouſly too ſucceſsfully aſſailed by others, and Plaintiff the claimant for ſuch a ſum, who has been himſelf guilty of great moral delinquency. I am no advocate for gallantry of this kind, but I would aſk you, has there been in this caſe a long train of ſeduction—a long friendſhip violated, or a confiding huſband betrayed? If ſuch be the caſe, puniſh the Defendant—puniſh him amply. But on the contrary, if that be not the fact, and the evidence laid before you ſhews it was not the fact—if Plaintiff's own conduct has contributed to his own misfortune, you are not to reward him for it. What is it to the Plaintiff that Lord Headfort is a married man—is his injury the greater?—You have nothing to do with the marriage of the Defendant—it can make no difference in point

of

of loſs whether he was ſo or not. His being ſeparate from his wife is a reaſon—a ſtrong reaſon, why the Plaintiff ſhould not allow his wife to aſſociate with him. The Plaintiff's counſel have talked of vindictive damages—it is an expreſſion unintelligible to me; they have ſaid he ſhould be made an example for all other adulterers. But your duty is to give damages proportionate to the injuries ſuſtained, and the conduct of the parties, otherwiſe, you may as well give damages, becauſe others have committed the ſame offence, as to prevent the repetition of it. If one man had aſſaulted another ſo grievouſly as to put out his eyes, it ſeems to me it would be equally right in you to give vindictive damages to prevent the repetition of it, as it would be to do ſo in the preſent caſe. But the fact is, each caſe muſt reſt on its own merits. You will aſk yourſelves theſe queſtions: did the Plaintiff ſee his wife dreſſed in ornaments beyond her means, and which he never ſupplied? Had he ſuch warning as ought to have been ſufficient to put him on his guard? If he had diſcharged his duty, could he have occaſion for bringing this action? The evidence laid before you has given an anſwer to theſe queſtions, and ought to be the rule by which your verdict ſhould be regulated. The liberty happily allowed to women in theſe countries, will often ſubject the beſt of huſbands to deception; but it is better to allow it, than to have recourſe to the horrible and abominable coercions practiced in other

other countries. Here women are their own miſtreſſes, and men are not their maſters. If huſbands acting under the generous feelings that are encouraged in theſe countries, are deceived, and if foul advantages are taken of them, it is hard to conſider any compenſation too great for the injury they ſuſtain; but if the huſband not only neglects, but almoſt invites addreſſes to his wife, he ſhall not be compenſated. What is the law in other caſes—is not the neglect, or want of vigilance of one's property, conſidered by the law as not entitled to redreſs? Is not an eſtate often loſt, becauſe the claim has not been made in a reaſonable time; and why ſhould it be otherwiſe in an action like this? Was the Plaintiff's conduct prudent and diſcreet? It has been ſaid he ordered ſeparate beds for himſelf and his wife—that he had forbid her for three weeks to viſit Limerick; and yet, ſtrange to tell, the Defendant during that time was received at his houſe. But ſuppoſe the Defendant was not received there—ſuppoſe the worſt that can be ſaid for my client—could not the Plaintiff have denied him admittance—could not he have removed for a time to the country with his wife? The conduct of the Plaintiff and his relations was far different. No indignation was expreſſed among them at the Defendant's conduct. He dined often after at Plaintiff's brother's houſe. Could the rigid injunction of Plaintiff on his wife, not to viſit Limerick or receive the Defendant, be conſidered ſerious? Was he not induced

to think, when he was received at Plaintiff's houſe after ſuch an injunction, that the whole proceeding was a mockery? The witneſs ſaid it was the fault of the head, and not of the heart of the Plaintiff, that occaſioned this neglect of his wife—admitted. It was ſtill a weakneſs in the extreme, not to diſcountenance the Defendant altogether. If a man is told in words his advances are not welcome, and yet the manner and actions contradict theſe words; which is to be believed? The Defendant knew that Plaintiff lived in habits of intimacy with his brother, frequented that brother's houſe, dined with him when he well knew, that the wife of that brother was baniſhed from her home, and in her place was ſubſtituted the miſtreſs of the brother, who ſat at the head of his table, and diſcharged all the other duties of the legitimate wife. The Plaintiff left his wife alone, ſpent days, and dined in company with Mrs. *Harvey*. The Plaintiff's being a clergyman, has nothing to do with this action. He is no more entitled to damages for that reaſon than any other man—It makes it only the more incumbent on him to attend to the morals and conduct of his wife. I do not juſtify the Defendant—I do not accuſe the Plaintiff of connivance; but I do inſiſt, that his own conduct—his own way of life, has occaſioned whatever misfortunes he has ſuffered. That this unhappy woman has yielded to the addreſſes of four months, cannot be diſputed. What was the occaſion of it? Was it the proſ-

pect

pect of marriage—was it love?—No! *twenty-five* does not love *fifty*. Her huſband was but twenty-eight—ſhe could not leave

"That fair and fertile plain, to batten on that moor."

Love might be a ſtrong excuſe for ſuch conduct, becauſe it is often too ſtrong for law, virtue, or morality—it becomes entitled therefore to human commiſeration. But how is it poſſible to conceive, that a woman of twenty-five could, after an acquaintance of four months, be induced by a violence of love, to throw herſelf into the arms of a man of fifty. If this huſband's conduct was virtuous and vigilant—if his wife's conduct was moral and domeſtic—and if, notwithſtanding, ſhe was ſeduced from him—if the Plaintiff was every thing that was right, and the Defendant every thing that was abominable, why then, give damages. But do not ſay, that becauſe Defendant is rich—becauſe he is a man of intrigue—becauſe he is a man of gallantry, you will therefore give vindictive damages. If the breath of ſlander had never reached this lady, previous to her acquaintance with the Defendant, puniſh the Defendant for his ſeduction; but, on the contrary, if the Defendant has been deceived by the huſband, and ſeduced by the wife, as men of ſenſe, conſider whether he ought therefore to be puniſhed by vindictive damages.

MR. CURRAN SPOKE TO EVIDENCE.

Never ſo clearly as in the preſent inſtance, have I obſerved that ſafeguard of juſtice, which Providence hath placed in the nature of man. Such is the imperious dominion with which truth and reaſon wave their ſceptre over the human intellect, that no ſolicitation, however artful, no talent, however commanding, can reduce it from its allegiance. In proportion to the humility of our ſubmiſſion to its rule, we do riſe into ſome faint emulation of that ineffable and preſiding divinity, whoſe characteriſtic attribute it is—to be coerced and bound by the inexorable laws of its own nature, ſo as to be *all-wiſe* and *all-juſt* from neceſſity, rather than election. You have ſeen it in the learned advocate who has preceded me, moſt peculiarly and ſtrikingly illuſtrated—you have ſeen *even* his great talents, perhaps the firſt in any country, languiſhing under a cauſe too weak to *carry* him, and too heavy to be *carried* by him. He was forced to diſmiſs his natural candour and ſincerity, and, having no merits in his caſe, to ſubſtitute the dignity of his own manner, the reſources of his own ingenuity, over the overwhelming difficulties with which he was ſurrounded. Wretched client! unhappy advocate! What a combination do you form! But ſuch is the condition of guilt—its commiſſion mean and tremulous—its defence artificial and inſincere—its proſecution candid and ſimple—its condemnation

nation dignified and auſtere. Such has been the Defendant's guilt—ſuch his defence—ſuch ſhall be my addreſs, and ſuch, I truſt, your verdict. The learned counſel has told you, that this unfortunate woman is not to be eſtimated at Forty Thouſand Pounds—fatal and unqueſtionable is the truth of this aſſertion. Alas! Gentlemen, ſhe is no longer worth any thing—faded, fallen, degraded, and diſgraced, ſhe is worth leſs than nothing! But it is for the honour, the hope, the expectation, the tenderneſs, and the comforts that have been blaſted by the Defendant, and have fled for ever, that you are to remunerate the Plaintiff, by the puniſhment of the Defendant. It is not her preſent value which you are to weigh—but it is her value at that time, when ſhe ſat baſking in a huſband's love, with the bleſſing of Heaven on her head, and its purity in her heart. When ſhe ſat amongſt her family, and adminiſtered the morality of the parental board—eſtimate that paſt value—compare it with its preſent deplorable diminution—and it may lead you to form ſome judgment of the ſeverity of the injury, and the extent of the compenſation.

The learned counſel has told you, you ought to be cautious, becauſe your verdict cannot be ſet aſide for exceſs. The aſſertion is juſt, but has he treated you fairly by its application? His cauſe would not allow him to be fair—for, why is the rule adoped in this ſingle action? Becauſe, this being peculiarly an injury to the moſt

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ſuſceptible of all human feelings—it leaves the injury of the huſband to be aſcertained by the ſenſibility of the jury, and does not preſume to meaſure the juſtice of their determination, by the cold and chilly exerciſe of his own diſcretion. In any other action, it is eaſy to calculate. If a tradeſman's arm is cut off, you can meaſure the loſs which he has ſuſtained—but the wound of feeling, and the agony of the heart, cannot be judged by any ſtandard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the preſent ſuffering of the huſband by the preſent guilt, delinquency, and degradation of his wife. As well might you, if called on, to give compenſation to a man for the murder of his deareſt friend—find the meaſure of his injury, by weighing the aſhes of the dead. But it is not, Gentlemen of the Jury, by weighing the aſhes of the dead, that you would eſtimate the loſs of the ſurvivor.

The learned counſel has referred you to other caſes, and other countries, for inſtances of moderate verdicts. I can refer you to ſome authentic inſtances of juſt ones. In the next county, 15,000*l.* againſt a ſubaltern officer. In Travers and M'Carthy, 5000*l.* againſt a ſervant. In Tighe againſt Jones, 10,000*l.* againſt a man not worth a ſhilling. What then ought to be the rule, where rank and power, and wealth, and ſtation, have combined to render the example of his crime more dangerous—to make his guilt

more

more odious—to make the injury to the Plaintiff more grievous, becauſe more conſpicuous? I affect no levelling familiarity, when I ſpeak of perſons in the higher ranks of ſociety—diſtinctions of orders are neceſſary, and I always feel diſpoſed to treat them with reſpect—but when it is my duty to ſpeak of the crimes by which they are degraded, I am not ſo faſtidious as to ſhrink from their contact, when to touch them is eſſential to their diſſection. In this action, the condition, the conduct, and circumſtances of the party, are juſtly and peculiarly the objects of your conſideration. Who are the parties? The Plaintiff, young, amiable, of family and education. Of the generous diſintereſtedneſs of his heart, you can form an opinion, even from the evidence of the Defendant, that he declined an alliance, which would have added to his fortune and conſideration, and which he rejected for an unportioned union with his preſent wife. She too, at that time young, beautiful and accompliſhed; and feeling her affection for her huſband encreaſe, in proportion as ſhe remembered the ardour of his love, and the ſincerity of his ſacrifice. Look now to the Defendant!—I bluſh to name him!—I bluſh to name a rank which he has tarniſhed—and a patent that he has worſe than cancelled. High in the army—high in the ſtate—the hereditary counſellor of the king—of wealth incalculable—and to this laſt, I advert with an indignant and contemptuous ſatisfaction, becauſe, as the only inſtrument of his guilt and

ſhame,

ſhame, it will be the means of his puniſhment, and the ſource of compenſation for his guilt.

But let me call your attention diſtinctly to the queſtions you have to conſider. The firſt is the fact of guilt. Is this noble Lord guilty? His counſel knew too well how they would have mortified his vanity, had they given the ſmalleſt reaſon to doubt the ſplendor of his atchievement. Againſt any ſuch humiliating ſuſpicion, he had taken the moſt ſtudious precaution by the publicity of the exploit. And here, in this court, and before you, and in the face of the country, has he the unparalleled effrontery of diſdaining to reſort even to a *confeſſion of innocence*—his guilt eſtabliſhed, your next queſtion is, the damages you ſhould give. You have been told, that the amount of the damages ſhould depend on circumſtances. You will conſider theſe circumſtances, whether of aggravation or mitigation. His learned counſel contend, that the Plaintiff has been the author of his own ſuffering, and ought to receive no compenſation for the ill conſequences of his own conduct. In what part of the evidence do you find any foundation for that aſſertion? He indulged her, it ſeems, in dreſs—generous and attached, he probably indulged her in that point beyond his means; and the Defendant now impudently calls on you, to find an excuſe for the adulterer, in the fondneſs and liberality of the huſband; but you have been told, that the huſband connived. Odious and impudent aggra-

vation

vation of injury—to add calumny to inſult, and outrage to diſhonour. From whom, but a man hacknied in the paths of ſhame and vice—from whom, but from a man having no compunctions in his own breaſt to reſtrain him, could you expect ſuch brutal diſregard for the feelings of others—from whom but the cold-blooded veteran ſeducer—from what, but from the exhauſted mind—the habitual community with ſhame—from what, but the habitual contempt of virtue and of man, could you have expected the arrogance—the barbarity—and folly of ſo foul—becauſe ſo falſe an imputation? He ſhould have reflected—and have bluſhed, before he ſuffered ſo vile a topic of defence to have paſſed his lips. But, ere you condemn, let him have the benefit of the excuſe, if the excuſe be true. You muſt have obſerved how his counſel fluttered and vibrated—between what they called connivance and injudicious confidence; and how, in affecting to diſtinguiſh, they have confounded them both together.—If the Plaintiff has connived, I freely ſay to you, do not reward the wretch who has proſtituted his wife, and ſurrendered his own honour—do not compenſate the pander of his own ſhame, and the willing inſtrument of his own infamy. But as there is no ſum ſo low, to which ſuch a defence, if true, ought not to reduce your verdict, ſo neither is any ſo high, to which ſuch a charge ought not to inflame it, if ſuch a charge be falſe. Where is the ſingle fact in this caſe on which

the remoteſt ſuſpicion of connivance can be hung?—Odiouſly has the Defendant endeavoured to make the ſofteſt and moſt amiable feelings of the heart, the pretext of his ſlanderous imputations. An ancient and reſpectable Prelate, the huſband of his wife's ſiſter, chained down to the bed of ſickneſs, perhaps to the bed of death. In that diſtreſſing ſituation, my client ſuffered that wife to be the bearer of conſolation to the boſom of her ſiſter—he had not the heart to refuſe her—and the ſoftneſs of his nature is now charged on him as a crime. He is now inſolently told, that he connived at his diſhonour, and that he ought to have foreſeen, that the manſion of ſickneſs and of ſorrow, would have been made the ſcene of aſſignation and of guilt. On this charge of connivance, I will not farther weary you, or exhauſt myſelf—I will add nothing more, than that it is as falſe as it is impudent—that in the evidence, it has not a colour of ſupport; and that by your verdict, you ſhould mark it with reprobation. The other ſubject, namely, that he was indiſcreet in his confidence, does, I think, call for ſome diſcuſſion—for I truſt, you ſee, that I affect not any addreſs to your paſſions, by which you may be led away from the ſubject—I preſume merely to ſeparate the parts of this affecting caſe, and to lay them item by item before you, with the coldneſs of detail, and not with any colouring or diſplay of fiction or of fancy.—Honourable to himſelf was his unſuſpecting confidence, but

fatal

fatal must we admit it to have been, when we look to the abuſe committed upon it; but where was the guilt of this indiſcretion? He did admit this noble Lord to paſs his threſhold as his gueſt. Now the charge which this noble Lord builds on this indiſcretion is—"thou fool—thou haſt confidence in my honour—and that was a guilty indiſcretion—thou ſimpleton, thou thoughteſt that an admitted and a cheriſhed gueſt, would have reſpected the laws of honour and hoſpitality, and thy indiſcretion was guilt.—Thou thoughteſt that he would have ſhrunk from the meanneſs and barbarity of requiting kindneſs with treachery, and thy indiſcretion was guilt."

Gentlemen, what horrid alternative in the treatment of wives would ſuch reaſoning recommend? Are they to be immured by worſe than Eaſtern barbarity? Are their principles to be depraved,—their paſſions ſublimated, every finer motive of action extinguiſhed by the inevitable conſequences of thus treating them like ſlaves? Or is a liberal and generous confidence in them to be the paſſport of the adulterer, and the juſtification of his crimes?

Honourably but fatally for his own repoſe, he was neither jealous, ſuſpicious, nor cruel.—He treated the Defendant with the confidence of a friend—and his wife with the tenderneſs of a huſband.—He did leave to the Noble Marquis the phyſical poſſibility of committing againſt him the greateſt crime which can be perpetrated againſt a being of an amiable heart and refined

education.—In the middle of the day, at the moment of divine worſhip, when the miſerable huſband was on his knees, directing the prayers and thankſgiving of his congregation to their God—that moment did the remorſeleſs adulteret chuſe to carry off the deluded victim from her huſband—from her child—from her character—from her happineſs,—as if, not content to leave his crime confined to its miſerable aggravations, unleſs he alſo gave it a caſt and colour of factitious ſacrilege and impiety. Oh! how happy had it been when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which like the fabled barque of Styx, the exile was eternal; how happy at that moment, ſo teeming with miſery and with ſhame, if you, my Lord, had met him and could have accoſted him in the character of that good genius which had abandoned him. How impreſſively might you have pleaded the cauſe of *the* father, of the child, of the mother, and even of the worthleſs Defendant himſelf. You would have ſaid, " is this the requital that you are about to make for reſpect and kindneſs, and confidence in your honour? Can you deliberately expoſe this young man in the bloom of life, with all his hopes yet before him.—Can you expoſe him, a wretched outcaſt from ſociety, to the ſcorn of a mercileſs world? Can you ſet him adrift upon the tempeſtuous ocean of his own paſſions, at this early ſeaſon when they are moſt headſtrong; and can you cut him out from the

moorings

moorings of thoſe domeſtic obligations by whoſe cable he might ride at ſafety from their turbulence? Think of, if you can conceive it, what a powerful influence ariſes from the ſenſe of home, from the ſacred religion of the hearth in quelling the paſſions, in reclaiming the wanderings, in correcting the diſorders of the human heart; do not cruelly take from him the protection of theſe attachments. But if you have no pity for the father, have mercy at leaſt upon his innocent and helpleſs child, do not condemn him to an education ſcandalous or neglected,—do not ſtrike him into that moſt dreadful of all human conditions, the orphanage that ſprings not from the grave, that falls not from the hand of providence, or the ſtroke of death; but comes before its time anticipated and inflicted by the remorſeleſs cruelty of parental guilt. For the poor victim herſelf—not yet immolated,—while yet balancing upon the pivot of her deſtiny, your heart could not be cold, nor your tongue be wordleſs. You would have ſaid to him, pauſe, my lord, while there is yet a moment for reflection. What are your motives, what your views, what your proſpects from what you are about to do? You are a married man, the huſband of the moſt amiable and reſpectable of women, you cannot look to the chance of marrying this wretched fugitive; between you and ſuch an event there are two ſepulchres to paſs. What are your inducements? Is it love, think you? No,—do not give that name to any attraction you

can

can find in the faded refuſe of a violated bed. Love is a noble and generous paſſion, it can be founded only on a pure and ardent friendſhip, on an exalted reſpect, on an implicit confidence in its object. Search your heart, examine your judgment, do you find the ſemblance of any one of theſe ſentiments to bind you to her? What could degrade a mind to which nature or education had given port or ſtature or character, into a friendſhip for her? Could you repoſe upon her faith? Look in her face, my Lord, ſhe is at this moment giving you the violation of the moſt ſacred of human obligations as the pledge of her fidelity.—She is giving you the moſt irrefragable proof that as ſhe is deſerting her huſband for you, ſo ſhe would without a ſcruple abandon you for another. Do you anticipate any pleaſure you might feel in the poſſible event of your becoming the parents of a common child? She is at this moment proving to you that ſhe is as dead to the ſenſe of parental as of conjugal obligation, and that ſhe would abandon your offſpring to-morrow, with the ſame facility with which ſhe now deſerts her own. Look then at her conduct, as it is, as the world muſt behold it, blackened by every aggravation that can make it either odious or contemptible, and unrelieved by a ſingle circumſtance of mitigation that could palliate its guilt, or retrieve it from abhorrence.

Mean, however, and degraded as this woman muſt be, ſhe will ſtill (if you take her with you) have

have ſtrong and heavy claims upon you.—The force of ſuch claims does certainly depend upon circumſtances; before therefore, you expoſe her fate to the dreadful riſque of your caprice or ingratitude, in mercy to her, weigh well the confidence ſhe can place in your future juſtice and honour; at that future time, much nearer than you think, by what topics can her cauſe be pleaded to a ſated appetite, to an heart that repels her, to a juſt judgment in which ſhe never could have been valued or reſpected? Here is not the caſe of an unmarried woman, with whom a pure and generous friendſhip may inſenſibly have ripened into a more ſerious attachment, until at laſt her heart became too deeply pledged to be reaſſumed: if ſo circumſtanced, without any huſband to betray, or child to deſert, or motive to reſtrain, except what related ſolely to herſelf, her anxiety for your happineſs made her overlook every other conſideration, and commit her hiſtory to your honor; in ſuch a caſe, (the ſtrongeſt and the higheſt that man's imagination can ſuppoſe); in which you at leaſt could ſee nothing but the moſt noble and diſintereſted ſacrifice; in which you could find nothing but what claimed from you the moſt kind and exalted ſentiment of tenderneſs, and devotion, and reſpect; and in which the moſt faſtidious rigor would find ſo much more ſubject for ſympathy than blame:—Let me aſk you, could you, even in that caſe, anſwer for your own juſtice and gratitude? I do not allude to the long and pitiful

catalogues

catalogue of paltry adventures, in which it ſeems your time has been employed.—The coarſe and vulgar ſucceſſion of caſual connexions, joyleſs, loveleſs and unendeared: but do you not find upon your memory ſome trace of an engagement of the character I have ſketched?—Has not your ſenſe of what you would owe in ſuch a caſe, and to ſuch a woman, been at leaſt once put to the teſt of experiment? Has it not once at leaſt happened, that ſuch a woman, with all the reſolution of ſtrong faith, flung her youth, her hope, her beauty, her talent, upon your boſom, weighed you againſt the world, which ſhe found but a feather in the ſcale, and took you as an equivalent? How did you then acquit yourſelf? Did you prove yourſelf worthy of the ſacred truſt repoſed in you? Did your ſpirit ſo aſſociate with hers, as to leave her no room to regret the ſplendid and diſintereſted ſacrifice ſhe had made? Did her ſoul find a pillow in the tenderneſs of yours, and a ſupport in its firmneſs? Did you preſerve her high in her own conſciouſneſs, proud in your admiration and friendſhip, and happy in your affection? You might have ſo acted, and the man that was worthy of her, would have periſhed rather than not ſo act, as to make her delighted with having confided ſo ſacred a truſt to his honour—did you ſo act? Did ſhe feel that, however precious to your heart, ſhe was ſtill more exalted and honoured in your reverence and reſpect? Or did ſhe find you coarſe and paltry, fluttering and unpur-

poſed

poſed, unfeeling, and ungrateful? You found her a fair and bluſhing flower, its beauty and its fragrance bathed in the dews of heaven. Did you ſo tenderly tranſplant it, as to preſerve that beauty and fragrance unimpaired? Or did you ſo rudely cut it, as to interrupt its nutriment, to waſte its ſweetneſs, to blaſt its beauty, to bow down its faded and ſickly head? And did you at laſt fling it like "a loathſome weed away?" If then to ſuch a woman, ſo cloathed with every title that could ennoble and exalt, and endear her to the heart of man, you could be cruelly and capriciouſly deficient, how can a wretched fugitive like this, in every point her contraſt, hope to find you juſt? Send her then away. Send her back to her home, to her child, to her huſband, to herſelf. Alas, there was none to hold ſuch language to this noble Defendant; he did not hold it to himſelf." But he paraded his deſpicable prize in his own carriage, with his own retinue, his own ſervants—this veteran Paris, hawked his enamoured Helen, from this weſtern quarter of the iſland, to a ſea port in the eaſtern, crowned with the acclamations of a ſenſeleſs and grinning rabble, glorying and delighted, no doubt, in the leering and ſcoffing admiration of grooms and oſtlers, and waiters, as he paſſed.

In this odious contempt of every perſonal feeling, of public opinion, of common humanity, did he parade this woman to the ſea port, whence he tranſported his precious cargo, to a

country where her example may be leſs miſchievous than in her own; where I agree with my learned colleague, in heartily wiſhing he may remain with her for ever. We are too poor, too ſimple, too unadvanced a country, for the example of ſuch atchievements. When the relaxation of morals, is the natural growth and conſequence of the great progreſs of arts and wealth, it is accompanied by a refinement, that makes it leſs groſs and ſhocking: but for ſuch palliations we are at leaſt a century too young. I adviſe you, therefore, moſt earneſtly to rebuke this budding miſchief, by letting the wholeſome vigour and chaſtiſement of a liberal verdict, ſpeak what you think of its enormity. In every point of view in which I can look at the ſubject, I ſee you are called upon to give a verdict, of bold, and juſt, and indignant, and exemplary compenſation. The injury of the Plaintiff demands it from your juſtice. The delinquency of the Defendant provokes it by its enormity. The rank on which he has relied for impunity, calls upon you to tell him, that crime does not aſcend to the rank of the perpetrator, but the perpetrator ſinks from his rank, and deſcends to the level of his delinquency. The ſtyle and mode of his defence, is a groſs aggravation of his conduct, and a groſs inſult upon you. Look upon the different ſubjects of his defence, as you ought, and let him profit by them as he deſerves; vainly preſumptuous upon his rank, he wiſhes to overawe you by the deſpicable conſideration.

deration. He next reſorts to a cruel aſperſion upon the character of the unhappy Plaintiff, whom he had already wounded, beyond the poſſibility of reparation; he has ventured to charge him with connivance: as to that, I will only ſay, Gentlemen of the Jury, do not give this vain boaſter, a pretext for ſaying, that if the huſband connived in the offence, the Jury alſo connived in the reparation. But he has preſſed another curious topic upon you: After the Plaintiff had cauſe to ſuſpect his deſigns, and the likelihood of their being fatally ſucceſsful, he did not then act preciſely as he ought. Gracious God, what an argument, for him to dare to advance! It is ſaying this to him: "I abuſed your confidence, your hoſpitality; I laid a baſe plan, for the ſeduction of the wife of your boſom; I ſucceeded at laſt, ſo as to throw in upon you that moſt dreadful of all ſuſpicions to a man fondly attached, proud of his wife's honour, and tremblingly alive to his own; that you were poſſibly a dupe to the confidence in the wife, as much as in the gueſt: in this ſo pitiable diſtreſs, which I myſelf had ſtudiouſly and deliberately contrived for you, between hope and fear, and doubt and love, and jealouſy and ſhame, one moment ſhrinking from the cruelty of your ſuſpicion; the next fired with indignation, at the facility and credulity of your acquittal; in this labyrinth of doubt, in this phrenzy of ſuffering, you were not collected and compoſed; you did not act as you might

have done, if I had not worked you to madneſs; and upon that very madneſs which I have inflicted upon you, upon the very completion of my guilt, and of your miſery, I will build my defence. You will not act critically right, and therefore are unworthy of compenſation." Gentlemen, can you be dead to the remorſeleſs atrocity of ſuch a defence! And ſhall not your honeſt verdict, mark it as it deſerves? But let me go a little further; let me aſk you, for I confeſs I have no diſtinct idea, of what ſhould be the conduct of an huſband ſo placed, and who is to act critically right? Shall he lock her up, or turn her out? Or enlarge or abridge her liberty of acting as ſhe pleaſes? Oh, dreadful Areopagus of the tea table! How formidable thy inqueſts, how tremendous thy condemnations! In the firſt caſe he is brutal and barbarous, an odious eaſtern deſpot. In the next; what! turn an innocent woman out of his houſe, without evidence or proof, but merely becauſe he is vile and mean enough, to ſuſpect the wife of his boſom, and the mother of his child! Between theſe extremes, what intermediate degree is he to adopt? I put this queſtion to you, do you at this moment, uninfluenced by any paſſion, as you now are, but cool and collected, and unintereſted as you muſt be, do you ſee clearly this proper and exact line, which the Plaintiff ſhould have purſued? I much queſtion if you do. But if you did or could, muſt you not ſay, that he was the laſt man from whom you ſhould expect

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the coolneſs to diſcover, or the ſteadineſs to purſue it? And yet this is the outrageous and inſolent defence, that is put forward to you. My miſerable client, when his brain was on fire, and every fiend of hell was let looſe upon his heart, he ſhould then, it ſeems, have placed himſelf before his mirror, he ſhould have taught the ſtream of agony to flow decorouſly down his forehead. He ſhould have compoſed his features to harmony, he ſhould have writhed with grace, and groaned in melody. But look farther to this noble Defendant, and his honourable defence; the wretched woman is to be ſucceſſively the victim of ſeduction, and of ſlander. She it ſeems received marked attentions—here, I confeſs, I felt myſelf not a little at a loſs. The witneſſes could not deſcribe, what theſe marked attentions were, or are. They conſiſted, not if you believe the witneſs that ſwore to them, in any perſonal approach or contact whatſoever—nor in any unwarrantable topics of diſcourſe. Of what materials then were they compoſed? Why, it ſeems, a Gentleman had the inſolence at table, to propoſe to her a glaſs of wine, and ſhe, oh moſt abandoned lady! inſtead of flying like an angry parrot, at his head, and beſmirching and beſcratching him for his inſolence, tamely and baſely replies, 'port, ſir, if you 'pleaſe.' But Gentlemen, why do I advert to this folly, this nonſenſe? Not ſurely to vindicate from cenſure, the moſt innocent, and the moſt delightful intercourſe of ſocial kindneſs,

of

of harmleſs and chearful courteſy—" where virtue is, theſe are moſt virtuous." But I am ſoliciting your attention, and your feeling, to the mean and odious aggravation—to the unbluſhing and remorſeleſs barbarity, of falſely aſperſing the wretched woman he had undone. One good he has done, he has diſcloſed to you the point in which he can feel; for, how imperious muſt that avarice be, which could reſort to ſo vile an expedient of frugality? Yes, I will ſay, that with the common feelings of a man, he would have rather ſuffered his 30,000 a year, to go as compenſation to the Plaintiff, than ſaved a ſhilling of it by ſo vile an expedient of economy. He would rather have ſtarved with her in a jail, he would rather have ſunk with her into the ocean, than have ſo vilified her,—than have ſo degraded himſelf. But it ſeems, Gentlemen, and indeed you have been told, that long as the courſe of his gallantries has been, and he has grown grey in the ſervice, it is the firſt time he has been called upon for damages—To how many might it have been fortunate, if he had not that impunity to boaſt? Your verdict will, I truſt, put an end to that encouragement to guilt, that is built upon impunity—the devil it ſeems, has ſaved the noble Marquis harmleſs in the paſt; but your verdict will tell him the term of that indemnity is expired, that his old friend and banker, has no more effects in his hands, and that if he draws any more upon him, he muſt pay his own bills himſelf.

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You will do much good by doing ſo, you may not enlighten his conſcience, nor touch his heart, but his frugality will underſtand the hint. It will adopt the prudence of age, and deter him from purſuits, in which, though he may be inſenſible of ſhame, he will not be regardleſs of expence. You will do more, you will not only puniſh him in his tender point, but you will weaken him in his ſtrong one, his money. We have heard much of this noble Lord's wealth, and much of his exploits, but not much of his accompliſhments or his wit. I know not that his verſes have ſoared even to the poet's corner. I have heard it ſaid, that an aſs laden with gold, could find his way through the gate of the ſtrongeſt city. But, Gentlemen, lighten the load upon his back, and you will completely curtail the miſchievous faculty of a grave animal, whoſe momentum lies not in his agility, but his weight, not in the quantity of motion, but the quantity of his matter. There is another ground, on which you are called upon to give moſt liberal damages, and that has been laid by the unfeeling vanity of the Defendant. This buſineſs has been marked by the moſt elaborate publicity. It is very clear that he has been allured by the glory of the chace, and not the value of the game. The poor object of his purſuit, could be of no value to him, or he could not have ſo wantonly and cruelly, and unneceſſarily abuſed her. He might eaſily have kept this unhappy intercourſe, an unſuſpected

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ſecret. Even if he wiſhed for her elopement, he might eaſily have ſo contrived it, that the place of her retreat would be profoundly undiſcoverable; yet, though even the expence, a point ſo tender to his delicate ſenſibility, of concealing, could not be a one fortieth of the coſt of publiſhing her, his vanity decided him in favour of glory and publicity. By that election he has in fact put forward the Iriſh nation, and its character, ſo often, and ſo variouſly calumniated, upon its trial before the tribunal of the empire; and your verdict will this day decide, whether an Iriſh Jury, can feel with juſtice, and ſpirit, upon a ſubject that involves conjugal affection and comfort, domeſtic honour and repoſe—the certainty of iſſue—the weight of public opinion—the gilded and preſumptuous criminality of overweening rank and ſtation. I doubt not, but he is at this moment reclined on a ſilken ſopha, anticipating that ſubmiſſive and modeſt verdict, by which you will lean gently on his errors; and expecting, from your patriotiſm, no doubt, that you will think again, and again, before you condemn any great portion of the immenſe revenue of a great abſentee, to be detained in the nation that produced it, inſtead of being tranſmitted, as it ought, to be expended in the ſplendour of another country. He is now probably waiting for the arrival of the report of this day, which I underſtand, a famous note-taker has been ſent hither to collect. (Let not the Gentleman be diſturbed.) Gentlemen, let me

aſſure

aſſure you, it is more, much more the trial of you, than of the noble Marquis, of which this imported recorder, is at this moment collecting the materials. His noble employer is now expecting a report to the following effect: "Such a day came on to be tried at Ennis, by a Special Jury, the cauſe of Charles Maſſy, againſt the moſt noble, the Marquis of Headfort." It appeared, that the Plaintiff's wife, was young, beautiful, and captivating. The Plaintiff himſelf, a perſon, fond of this beautiful creature, to diſtraction, and both doating on their child; but the noble Marquis approached her, the plume of glory nodded on his head. Not the goddeſs Minerva, but the goddeſs Venus had lighted upon his caſque, "the fire that never tires—ſuch as many a lady gay had been dazzled with before." At the firſt advance ſhe trembled, at the ſecond ſhe ſtruck to the redoubted ſon of Mars, and pupil of Venus. The jury ſaw it was not his fault; (it was an Iriſh Jury) they felt compaſſion for the tenderneſs of the mother's heart, and for the warmth of the lover's paſſion. The Jury ſaw on the one ſide, a young, entertaining gallant, on the other, a beauteous creature, of charms irreſiſtible. They recollected, that Jupiter had been always ſucceſsful in his amours, although Vulcan had not always eſcaped ſome awkward accidents. The Jury was compoſed of fathers, brothers, huſbands—but they had not the vulgar jealouſy, that views little things of that ſort with rigour, and wiſhing to aſſimilate

their country in every reſpect to England, now that they are united to it, they, like Engliſh Gentlemen, returned to their box, with a verdict of ſixpence damages and ſixpence coſts." Let this be ſent to England. I promiſe you, your odious ſecret will not be kept better than that of the wretched Mrs. Maffy. There is not a bawdy chronicle in London, in which the epitaph, which you would have written on yourſelves, will not be publiſhed, and our enemies will delight in the ſpectacle of our precocious depravity, in ſeeing that we can be rotten before we are ripe. I do not ſuppoſe it, I do not, cannot, will not, believe it: I will not harrow up myſelf with the anticipated apprehenſion.

There is another conſideration Gentlemen, which I think moſt imperiouſly, demands even a vindictive award of exemplary damages, and that is the breach of hoſpitality. To us peculiarly does it belong to avenge the violation of its altar. The hoſpitality of other countries is a matter of neceſſity or convention, in ſavage nations of the firſt, in poliſhed of the latter, *but the hoſpitality of an Iriſhman* is not the running account of poſted and ledgered courtecies, as in other countries;—it ſprings like all his qualities, his faults, his virtues—directly from his heart. The heart of an Iriſhman is by nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is ſocial, and he is hoſpitable. This ſacrilegious intruder has propfaned the religion of that ſacred altar ſo elevated in our worſhip, ſo

precious

precious to our devotion; and it is our privilege to avenge the crime. You muſt either pull down the altar, and aboliſh the worſhip, or you muſt preſerve its ſanctity undebaſed. There is no alternative between the univerſal excluſion of all mankind from your threſhold, and the moſt rigorous puniſhment of him who is admitted and betrays. This defendant has been ſo truſted, has ſo betrayed, and you ought to make him a moſt ſignal example.

Gentlemen, I am the more diſpoſed to feel the ſtrongeſt indignation and abhorrence at this odious conduct of the Defendant, when I conſider the deplorable condition to which he has reduced the Plaintiff, and perhaps the ſtill more deplorable one that he has in proſpect before him. What a progreſs has he to travel through, before he can attain the peace and tranquillity which he has loſt? How like the wounds of the body are thoſe of the mind! How burning the fever! How painful the ſuppuration, how ſlow, how heſitating, how relapſing the proceſs to convaleſcence? Through what a variety of ſuffering, what new ſcenes and changes, muſt my unhappy client paſs, ere he can re-attain, ſhould he ever re-attain, that health of ſoul of which he has been deſpoiled, by the cold and deliberate machinations of this practiſed and gilded ſeducer? if, inſtead of drawing upon his incalculable wealth for a ſcanty retribution, you were to ſtop the progreſs of his deſpicable atchievements by reducing him to actual poverty, you could not

even ſo, puniſh him beyond the ſcope of his offence, nor repriſe the Plaintiff beyond the meaſure of his ſuffering. Let me remind you, that in this action, the law not only impowers you, but that its policy commands you to conſider the public example, as well as the individual injury, when you adjuſt the amount of your verdict. I confeſs I am moſt anxious that you ſhould acquit yourſelves worthily upon this important occaſion. I am addreſſing you as fathers, huſbands, brothers. I am anxious that a feeling of thoſe high relations ſhould enter into, and give dignity to your verdict. But I confeſs it, I feel a ten fold ſolicitude when I remember that I am addreſſing you as my countrymen, as Iriſh men, whoſe characters as Jurors, as Gentlemen, muſt find either honour or degradation in the reſult of your deciſion. Small as muſt be the diſtributive ſhare of that national eſtimation, that can belong to ſo unimportant an individual as myſelf, yet do I own I am tremblingly ſolicitous for its fate. Perhaps it appears of more value to me, becauſe it is embarked on the ſame bottom with yours; perhaps the community of peril, of common ſafety, or common wreck gives a conſequence to my ſhare of the riſque, which I could not be vain enough to give it, if it were not raiſed to it by that mutuality. But why ſtoop to think at all of myſelf, when I know that you, Gentlemen of that Jury, when I know that our country itſelf are my clients on this day, and muſt abide the alternative of honour, or of infamy

fairly as you ſhall decide. But I will not deſpond, I will not dare to deſpond. I have every truſt, and hope, and confidence in you. And to that hope I will add my moſt fervent prayer to the God of all truth and juſtice, ſo to raiſe and enlighten, and fortify your minds, that you may ſo decide, as to preſerve to yourſelves while you live, the moſt delightful of all recollections, that of acting juſtly, and to tranſmit to your children the moſt precious of all inheritances, the memory of your virtue.

The Evidence having been ſpoken to on both ſides, BARON SMITH addreſſed the Jury as follows:

Gentlemen of the Jury,

After the long and ſerious demands, which this trial has already made on your attention, (rendered the leſs irkſome, by the brilliant diſplays of eloquence which we have witneſſed), I am ſorry it has fallen to my lot to treſpaſs farther on your patience; nor ſhall I do ſo in any greater degree than is preſcribed to me by the duties of my ſituation; conſidering the importance of the queſtion which you are to decide; and the large amount of the Damages which the Plaintiff claims.

I ſhall ſet out by informing you, to the beſt of my knowledge, of the legal doctrines, which are applicable to actions of the deſcription of this which is on trial; and ſhall then proceed to ſum

up

up the evidence which has been given; without feeling it neceſſary to interrupt the recapitulation by any general remarks. In ſhort, I ſhall leave to you to apply to the facts of the caſe (of which you are the proper judges) thoſe preliminary ſtatements of the law, which I ſhall have made.

In the firſt place I feel myſelf not only warranted, but bound to apprize you of a principle, which I find laid down in books of high authority, and of modern law. The principle is—that this ſort of action partakes of the nature of penal proſecution, and that large and exemplary damages are uſually awarded. The rigour of the above doctrine (it muſt however be obſerved) is regulated and reſtrained by a variety of qualifications; and appears to be ſo diluted and ſoftened that it amounts at laſt to little more than this, that where the Plaintiff's right of action is indiſputable, and the injury which he hath ſuſtained is manifeſtly great;—and where (as muſt always be the caſe) it is impoſſible to calculate with exact preciſion, the amount, in pounds, ſhillings, and pence, of the value of thoſe comforts of which he has been deprived. There, Juries ſhould not be parſimonious in the damages which they award; but, on the contrary, ſhould be liberal, to a degree bordering on prodigality and profuſion, for the benefit of public example, and the protection of public morals. This part of the queſtion may perhaps be illuſtrated by a familiar uſage, in the caſe of aſſaults. An aſſault is at

once

once a civil injury, for which the ſufferer has a right to be retributed in damages; and it is an offence, for which the aggreſſor is liable to puniſhment. If he be convicted on an indictment for the miſdemeanour, the practice is, for the Crown Judge to aſcertain whether the proſecutor intends to bring an action. If not, a puniſhment is inflicted commenſurate to the crime. Otherwiſe, a lenient and inadequate ſentence is pronounced. In this latter caſe, the verdict of a Record Jury is in ſome meaſure ſubſtituted for the judgment of a Criminal Court. To apply this, adultery is a crime, not indeed of temporal cognizance, but puniſhable by the ſpiritual law, which is part of the law of the land. But proceedings of ſuch a nature in the ſpiritual courts, having become ſo unuſual as to be nearly obſolete, perhaps we may, by a fair analogy, conſider the tranſaction as indirectly ſubject to the animadverſion of the Jury which tries the civil action.

We muſt not, however, carry this principle too far. We muſt not forget, firſt, that ours is a mere civil tribunal; or ſecondly, that adultery is no crime of temporal cognizance. If it were, that would not be law which we know is law. The law is, that if the Jury be convinced, from the conduct of the Plaintiff, that he was conſenting to the infamy of his wife,—they are bound in ſuch circumſtances, to find a verdict for the Defendant. Now this could never be the caſe, if their province were to puniſh adultery as a crime; ſince

ſince it is plain that the guilt of the Defendant would not be diminiſhed, by the Plaintiff's having been acceſſary to his offence. Thus the poſition to which I have adverted, can only admit of the interpretation which I have given it; viz. that where it is (as in every ſuch action it muſt be) difficult to make the value of the Plaintiff's loſs a ſubject of pecuniary calculation, there it ſhall be competent to the Jury to take the advancement of public morality into their conſideration. But they muſt make it a matter of collateral and ſubordinate conſideration.—They muſt recollect that they are not ſitting on the crown ſide; but that their main, or rather that their only province, is to decide on a violation of the private rights of parties.

The civil injury for which the Plaintiff is entitled to compenſation, is the wound given to his feelings and happineſs as a huſband; and therefore the damages ſhould be proportioned to its poignancy and extent. Accordingly theſe are ſuſceptible of aggravation, or mitigation, on various grounds; which are all in fact merely detailed applications of the principle which I have mentioned laſt; namely, that the degree of the injury ſuſtained, is the proper ſtandard for meaſuring the amount of the compenſation.

The firſt ground which I ſhall notice—as one, upon which the Jury may compute, and juſtify, the quantum of damages which they award, is the rank and ſituation of the Plaintiff.

Nor

Nor does this rule trench on the impartial character of our law; or hold out different meaſures of juſtice to the rich and to the poor. It merely provides that the ſeverer the injury is, the greater ſhall be the retribution. Virtue is far from being peculiar to the higher ranks; but there is, perhaps, a delicacy of ſentiment, and punctilio of honour engendered by the refined habits which belong to opulence and diſtinction, and which ſharpen the ſting of ſuch an injury as this. Beſides, the more exalted is the ſphere, the more are thoſe who move in it expoſed to obſervation; and conſequently the more muſt ſuch be injured by an aggreſſion, which ſubjects the ſufferer to ſcorn.

The fortune of the Defendant ſupplies another conſideration, by which, in eſtimating damages, a Jury might be guided. Not that they ought to more than compenſate a Plaintiff, merely becauſe the Defendant happened to be rich. This would be to violate the maxim which we have laid down—that the damages awarded ſhould bear a proportion to the injury ſuſtained. But a Jury in the caſe of an indigent Defendant, may be diſpoſed to give a Plaintiff leſs than the value of what he has loſt, rather than, by awarding adequate compenſation, doom him who is to make it, to impriſonment for life. Where the aggreſſor is in affluent circumſtances, they will be relieved from ſuch humane difficulties, and may find damages commenſurate to the injury which has been ſuſtained.

It is alſo the duty of a Jury to enquire whether the criminal intercourſe has, or has not been the conſequence of a preceding ſeduction of the wife. As evidence of this, they ſhould examine her previous character and conduct; and may found their eſtimate of damages on ſuch inveſtigation. They may alſo take into account the connection which ſubſiſted between the parties, and aſcertain how far it involved thoſe rights of hoſpitality or friendſhip, which might juſtify the Plaintiff in being leſs circumſpect and ſuſpicious; and repoſing the greater confidence in the perſon who betrayed it. To the ſame head I would refer the age of the Defendant; and the circumſtance of his being married. It would be injurious to morals to diſcourage that greater reliance, which it is natural to place on an aged, and married, than on a younger, and a ſingle man. The duties and attachments which may be ſuppoſed to belong to the married ſtate—and the bodily infirmities, the extinguiſhed paſſions, and confirmed and ſettled morality which ſhould belong to age, are ſo many ſecurities for the honour of a huſband, and juſtify the confidence which they inſpire. If, however, theſe ſecurities ſhould appear in proof to have been leſſened, by the gallantries of a Defendant, by his reputation in this reſpect, and by the footing on which he lived with his own wife; a Jury would be bound to throw theſe latter conſiderations into the oppoſite ſcale.

The

The injured husband's obligation by settlement or otherwise to provide for the issue of that marriage, whose rights have been encroached on, is also a fit object of enquiry for the Jury. Neither, indeed, can I conceive a more malignant source of agony to a feeling heart,—a greater exasperation of the pain of that wound, to whose poignancy the compensation should be proportioned, than must arise from the perplexing doubt in a supposed father's mind, whether the child who shares his caresses, who is to inherit his possessions, for whom he is bound to provide—to whose advancement he has devoted his industry and his talents, has any natural and just claim to this parental care; whether it be a pledge of his wife's past affection for himself; or the offspring and memorial of her infidelity and his own disgrace.

If the complainant has had criminal connexions with other women, his damages shall be curtailed on this account. Both because these connexions negative the existence of a high degree of matrimonial comfort; and because such dissipation and neglect is calculated to set an ill example to the woman: it tends to sap her morals, to estrange her affections, and facilitate her seduction. Therefore, though he have not been actually unfaithful, yet by associating with women of forfeited or sullied honour,—he may diminish his claim to damages, if this association has fallen under the eye of his wife, and has

ariſen not from peculiarity of circumſtance, but from laxity of principle.

Again, in aſcertaining the damages, to which ſuch a Plaintiff is entitled, his having treated his wife with tenderneſs or harſhneſs, their having lived on terms of harmony or diſcord, (let the fault have lain where it may) are proper ſubjects of attention from a Jury; for the giſt of this action is the huſband's loſs of the comfort and ſociety of his wife; and this comfort muſt be in proportion to their mutual cordiality and attachment.

Indeed where this affection appears by the evidence to have amounted to that engroſſing, and ſubjugating ſentiment called love, the keenneſs of the wound is infinitely augmented, and the amount of the compenſation ſhould be proportionally encreaſed.

We have already ſeen that where a huſband connives at the infidelity of his wife, the effect ſhall be, not only to diminiſh his compenſation, but to deſtroy his right of action altogether, and diſentitle him to any verdict whatſoever; and this on one or both of the following grounds; *firſt*, that volenti non fit injuria; *ſecondly*, that a profligate accomplice in his wife's diſhonour, forfeits his right to the protection of the Court.

But there may be a levity in the huſband's behaviour, and a culpable inattention to the conduct of his wife, which not amounting to a

conſent

conſent to her infamy, ſhall not, indeed, diſentitle him to a verdict, but which having probably contributed to her ſeduction, ſhall mitigate the damages which are awarded to him.

It has been urged in the preſent caſe, that if any ſuch negligence exiſted, it aroſe (to adopt the language of one of the witneſſes) "not from the fault of the heart, but of the head."—This excuſe is founded in miſapprehenſion. If the inattention aroſe from the fault of the heart, it would amount to connivance; and deſtroy the Plaintiff's right of action altogether. When the neglect ariſes only from an error of the head, it leaves him a right of action; but is evidence admiſſible in mitigation of damages.

Otherwiſe a ſnare would be laid for the Defendant; who, judging of the Plaintiff's motive by his conduct, might ſuppoſe that he intended to connive; and was an accommodating huſband, not from inadvertence, but from deſign.

At the ſame time, towards entitling a Plaintiff to recover largely, we muſt not require that he ſhould have been a Spaniſh or an Oriental huſband. We muſt recollect the freedom which our cuſtoms allow to females; and not lay down a rule ſo rigorous as this, that the rights of every married man may be invaded, whoſe conduct is not a ſyſtem of ſuſpicion and controul; expoſing the jealous ſpy to public deriſion; and degrading the woman who is the object of this diſtruſt; offending her pride, and alienating her affections.

It

It ſhould ſuffice that he does not negligently overlook behaviour, which ought to excite the vigilence of a man duly attentive to his wife's honour. The law inveſts every huſband with certain privileges, and authorities; and if he will not uſe them for his own protection, he muſt forfeit a part of his claim to damages, as the reaſonable conſequence of his default. It is the vigilant, not the indolent, whom the law ſtrenuouſly aſſiſts.

There are but two obſervations more, which I have to make. Firſt, that if, in meaſuring the damages, public morals and example ſhould be at all taken into the queſtion, we muſt remember that Plaintiffs as well as Defendants, are ſubject to the infirmities and depravities of our imperfect nature. We muſt therefore take care how, by awarding damages to an enormous amount, we hold out a temptation to the unprincipled huſband, diſſembling his own connivance, to wink however at his wife's diſhonour, when he finds that her infamy will bring ſo high a price.

The ſecond, and laſt remark which I have to trouble you with, is this; that you will be the more ſcrupulous in meaſuring the compenſation which you award,—becauſe, if you grant too much, it is improbable that your error can ever be corrected; it being the eſtabliſhed practice, if it be not the undoubted law, that in actions of this nature, however high the damages

ges which are found, may be, the verdict cannot be ſet aſide on the mere ground of their being exceſſive.

Baron *Smith* then proceeded to recapitulate the evidence, as it appeared upon his notes; and having done ſo, cloſed his charge, without any farther obſervations on the law.

Trial laſted 12 hours, verdict for Plaintiff 10,000*l.* at 12 o'clock at night, with coſts.

FINIS.

AP AMJ WVr
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